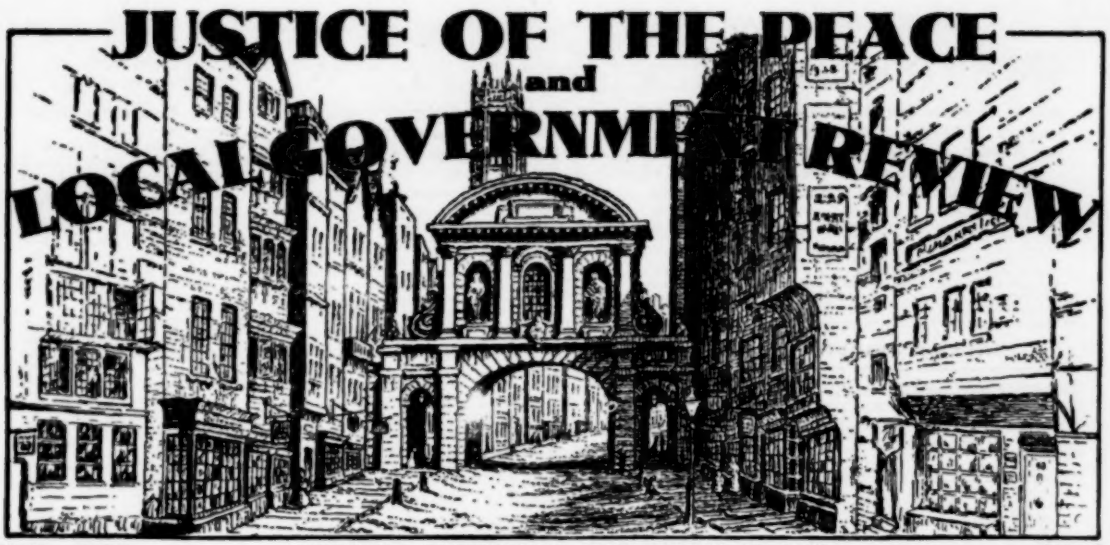

VOL. CXVI LONDON: SATURDAY, FEBRUARY 23, 1952 No. 8

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REPORTS

Official & Classified Advertisements, etc.

Official Advertisements (Appointments, Tenders, etc.), 2s. per line and 3s. per displayed headline. Classified Advertisements, 24 words 6s. (each additional line 1s. 6d.) Box Number, 1s. extra *Latest time for receipt* 10 *a.m. Thursday*

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BOROUGH OF BARKING

Appointment of Assistant Solicitor

Assistant Solicitor—Grade VI/VII

APPLICATIONS are invited for this appointment at a commencing salary which will be fixed within Grades VI/VII having regard to the successful candidate's experience.

Forms of application and particulars of appointment, which may be obtained from the undersigned, are returnable by March 3, 1952.

E. R. FARR,
Town Clerk.

Town Hall, Barking.

COUNTY OF ESSEX

APPLICATIONS invited from men who are familiar with the work of Petty Sessions, Quarter Sessions and Assize Courts ; experience in local government office not necessary. Candidates must be quick and accurate shorthand-writers and typists. Salary will be according to qualifications and experience but will not exceed £490 a year. Office hours at the rate of 38 a week ; two Saturday mornings free in four weeks or paid for as overtime ; eighteen working days' holiday ; sick pay allowances ; superannuation ; canteen. Applications in own handwriting should be addressed as soon as possible to the County Clerk, County Hall, Chelmsford; should state particulars of age, education, qualifications and experience ; and give the names and addresses of three referees. Canvassing forbidden.

LONDON COUNTY COUNCIL

APPLICATIONS invited from men and women under 41 on March 8, 1952, with several years' practical experience in a solicitor's office, for permanent appointment as law clerks, class II, in the Legal and Parliamentary Department. Salary (including temporary additions)—£360 × £30—£660. Commencing salary according to ability and experience. Prospects of promotion. Compulsory superannuation scheme.

Further particulars and application form (returnable by March 8, 1952) from Solicitor, The County Hall, S.E.1 ("Law Clerk"). Send stamped addressed foolscap envelope. (169).

URBAN DISTRICT OF WOLVERTON

Clerk of the Council and Chief Financial Officer

APPLICATIONS are invited for the appointment. Salary (£900 × £50 × 4—£1,100 per annum) and Conditions of Service in accordance with recommendations of Joint Negotiating Committee for Town Clerks and District Council Clerks. House available. Applications, on forms obtainable from me, must be received by March 15, 1952.

A. J. W. JEFFERY,
Clerk of the Council.

Market Square, Stony Stratford,
Wolverton, Bucks.

BOROUGH OF HARROGATE

Appointment of Assistant Solicitor

APPLICATIONS are invited from Solicitors for an appointment in the Town Clerk's Department, at a salary in accordance with Grade V(a) of the A.P.T. Division £600 × £20 to £660 per annum).

The appointment will be subject to (*a*) the Local Government Superannuation Act, 1937 ; (*b*) the passing of a medical examination ; (*c*) the National Conditions of Service as adopted by the Council, and will be terminable by one month's notice on either side.

Applications, stating age, qualifications and experience, and with the names and addresses of three persons to whom reference may be made, and stating relationship (if any) to any member or senior officer of the Council, must be received by the undersigned within seven days of the publication of this advertisement.

Canvassing, directly or indirectly, will disqualify.

J. A. BAIRD,
Town Clerk.

Municipal Offices,
Harrogate.
February, 1952.

ADMINISTRATIVE COUNTY OF CUMBERLAND

Appointment of Deputy Clerk of the Council

APPLICATIONS are invited for the appointment of Deputy Clerk of the County Council from solicitors with experience of legal and administrative work in local government, and willing to be appointed as Deputy Clerk of the Peace if Quarter Sessions so desire. The salary of the Deputy Clerk of the Council will be at the rate of £1,450 per annum rising by increments of £50 to a maximum of £1,600 per annum, together with appropriate travelling and subsistence allowances.

Full particulars and conditions are obtainable from the undersigned by whom applications must be received not later than March 3, 1952.

Canvassing, directly or indirectly, will be a disqualification.

G. N. C. SWIFT,
Clerk of the County Council.

The Courts, Carlisle.

CITY OF PLYMOUTH

Appointment of Conveyancing Clerk, Town Clerk's Office

APPLICATIONS are invited for the above appointment at a salary of £490 per annum rising by annual increments of £15 to £535 per annum. The appointment is superannuable and the successful applicant will be required to pass a medical examination. Previous experience in a Local Government Office is not essential. Applications giving details of experience in a Solicitor's or Municipal office and particularly Conveyancing work, and particulars of present and previous employments must reach me before Tuesday, March 11, 1952. Applications should state the names and addresses of not more than two referees as to character and ability.

Dated February 8, 1952.

COLIN CAMPBELL,
Town Clerk.

Pounds House,
Plymouth.

CITY OF BIRMINGHAM

Appointment of Assistant Principal Probation Officer

THE Probation Committee invite applications for the above appointment, which will be subject to the Probation Rules, 1949 and 1950. The commencing salary will be in accordance with Scale No. 9 of the Third Schedule of the Probation Rules, 1950.

The Assistant Principal Officer will be expected, under the direction of the Principal Officer, to supervise and direct the general work of a Probation Department and, in addition to the normal qualifications of a Probation Officer, to possess the ability to effect and maintain close contacts with social agencies and other bodies.

The successful applicant will be required to pass a medical examination.

Applications (in own handwriting), stating age, present position, general qualifications and experience, should be sent with copies of not exceeding three recent testimonials to the undersigned not later than fourteen days after the publication of this notice.

T. M. ELIAS,
Secretary to the Probation Committee.

Victoria Law Courts,
Birmingham 4

Justice of the Peace
and
Local Government Review
[ESTABLISHED 1837.]

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NOTES of the WEEK

Deplorable

Commenting upon Hilbery, J.'s, condemnation in *Lea* v. *Justice of the Peace, Ltd.* (*see* 111 J.P.N. 521) of the vulgarity of intrusion into private life, the editor of one of the monthly reviews suggested that a wedding at Westminster Abbey could hardly be called a private function. The comment missed the point. Our Note of the Week at 110 J.P.N. 38, which gave rise to that decision, was not directed against press representatives doing their normal work in public places, or even in private places to which they are admitted knowingly, but against what we called the "ungentlemanly" conduct of the prosecutor in that case, and impliedly of newspapers of the type of that which employed him at the time. He had, it will be remembered, slipped uninvited and unknown by a subterfuge among wedding guests at a private residence, concealing a camera with which he then photographed the bride and bridegroom, notwithstanding its having been made known that press photographers would not be admitted. This sad month of February, 1952, marked by spontaneous demonstration of a nation's grief, has been marked also, and deplorably marred, by evidence of bad taste and vulgarity not unlike that which we condemned in our Note of six years ago. It has been said that the telescopic camera is capable of destroying private life: some of the newspaper pictures of the Queen and other members of the Royal Family, which have appeared this month can only have been obtained by long range photography—conceivably in some public place but obviously unknown to the persons photographed. If we refrain from particular mention of the offences against good taste and the normal instinct of the decent Englishman, which have met our own eyes, it is because we do not profess to have plumbed the depths of which some newspapers are capable; there are only too likely to be worse things than we have seen. While Her Majesty's subjects in their thousands were braving February sleet and winds on Thames-side, in the long pilgrimage to the Catafalque, there were property owners turning out tenants beside the route of the Funeral, in order to let window space at a fantastic profit (it is gratifying that several recognized agencies declined to take part in this traffic), and there were newspaper proprietors employing their photographers to take long range unconventional snapshots, amounting to "close-ups" of the grief-stricken Queen and other members of the Royal Family as they went about their melancholy duties. It is a saddening thought.

Husband and Wife in Charges of Larceny

It is sufficiently uncommon for husband or wife to charge the other with stealing to make it worthwhile, when such a case is reported, to take notice and refresh memory upon the law.

Recently a woman appeared in a magistrates' court upon a charge of stealing a large sum of money belonging to her husband. The case had a happy ending when counsel for the prosecution stated that there had been a reconciliation between husband and wife and as they were now living together there was a complete bar to any prosecution or proceedings in that court.

The Married Women's Property Act, 1882, as amended, gives a married woman remedies in respect of her property against all persons including her husband, as if she were a *femme sole*, but so far as criminal proceedings are concerned, it is enacted that no such proceedings shall be taken by a wife against her husband by virtue of the Act while they are living together as to or concerning any property claimed by her, nor while they are living apart as to or concerning any act done by the husband while they were living together concerning property claimed by the wife, unless such property shall have been wrongfully taken by the husband, when leaving or deserting or about to leave or desert his wife. The same Act makes similar provision for the prosecution of a wife in relation to her husband's property. Section 36 of the Larceny Act, 1916, deals in like manner with the question.

Where proceedings are taken under the Married Women's Property Act, husband or wife is a competent witness for the prosecution, by virtue of the Criminal Evidence Act, 1898. In general, a spouse who is by statute made a competent witness for the prosecution is not compellable, but it is considered that in this instance the husband or wife is compellable, *see Phipson on Evidence*, 8th edn., p. 450.

Divorce Court Alimony and Justices' Maintenance Order

In *Pooley* v. *Pooley* (*The Times*, January 22), the Divisional Court (the President and Karminski, J.), dealt with a question of the jurisdiction of a magistrates' court at a time when proceedings for divorce were in progress.

The wife had presented a petition for divorce on the ground of desertion, in which petition she included a prayer for alimony pending suit. She had previously obtained a maintenance order in a magistrates' court, and, recognizing that she could not have an order for alimony and a magisterial order in force at the same time, she applied to the magistrates' court to revoke its order. The stipendiary magistrate dismissed her application, primarily because he did not think that he had jurisdiction to adjudicate on the matter while proceedings were pending in the High Court. The wife appealed.

In his judgment, the President said that a wife who had taken divorce proceedings was entitled to pursue her rights for maintenance in the Divorce Court, provided, of course, that she first got rid of any existing order for maintenance which had been made in another court. It was advantageous for her to apply to the Divorce Court. If she did not apply at the time of the divorce proceedings, but chose to rely on the order

made by a court of summary jurisdiction, the time might come when something happened which might oblige the magistrate to cancel that order, and she might then be hopelessly out of time for any sort of application to the Divorce Court. This was not a case of conflict of jurisdiction, in fact the application was made to ensure that there would be no overlap between the two jurisdictions. The appeal was allowed and the maintenance order discharged.

It will be recalled that in *Kilford* v. *Kilford* [1947] 2 All E.R. 381, the wife had obtained a maintenance order from justices, and later, on being granted a divorce she asked for maintenance in a nominal sum from the Divorce Court, in order to preserve her right to apply for an increase under the Administration of Justice (Miscellaneous Provisions) Act, 1938, s. 14. Barnard, J., held the wife must elect either to retain the order of the justices or to apply to the justices to have that order discharged, and seek an order in the Divorce Court. This decision was followed in *Ross* v. *Ross* [1950] 1 All E.R. 654.

Magistrates' Courts Committees

Magistrates' courts committees, established under the Justices of the Peace Act, 1949, came into existence on February 1. Their functions are important, for they will be responsible for the administration and staffing of the magistrates' courts in their areas, for arranging courses of instruction for justices of the peace, and in counties for reviewing the division of the county into petty sessional divisions. Although most of the changes in the law will not take effect until April 1, 1953, it is pointed out by the Home Office that in the meantime they will have the task of reviewing the needs of their areas.

Circular 21/1952 issued by the Home Office contains a great deal of useful information upon the many administrative and financial questions with which the committees will have to deal.

Upon the subject of the expenditure of money, the circular says: "Consultation on these matters between the committee and the council or councils concerned should be as close as possible because generally these matters can be settled satisfactorily by local agreement, without recourse to an appeal to the Secretary of State, and efforts to reach agreement should not be abandoned until it is plain that the points of view of the parties cannot be reconciled."

Section 18 of the Act, which deals with the question of petty sessional divisions of counties, is in force during the interim period. Regulations are to be made soon and a further explanatory circular will be issued. The Secretary of State will not be prepared, save in limited circumstances, to make an order having effect before April 1, 1953.

Justices' Clerks' Salaries and Staffs

Upon the magistrates' courts' committees will devolve the duty of dealing with various questions relating to the staffing of the courts. Salaries of clerks are in many cases in urgent need of revision, and so are the conditions of service of some members of the staffs employed under them. These matters are thoroughly explained in the Home Office circular. As to the salaries of justices' clerks, the circular states that the Secretary of State is informed that "Discussions are still taking place regarding the possible formation of a joint negotiating committee on justices' clerks' salaries between representatives of the Association of Municipal Corporations, the County Councils Association, the London County Council, the Magistrates' Association and the Justices' Clerks' Society. While bearing in mind that these matters will need to be determined in advance of April 1, 1953, it would in the Secretary of State's view, be advisable for the present for the magistrates' courts committee to await the progress of any negotiations which may take place before taking any action to determine the salaries of justices' clerks."

As to courses of instruction, much has already been done in some divisions, without waiting for the formation of the new committees. We have no doubt that when the committees get to work they will not fail to realize the importance of such courses.

A Year Book for Justices

We are indebted to Mr. John D. Stokeld, clerk to the justices for Redcar and Saltburn, for a copy of the year book he prepares for his justices. It is a tiny pocket book, but it contains just the kind of information a justice wants to have always handy, as to the arrangements of courts and committees and other matters.

The days on which courts are ordinarily held are stated, together with the dates of quarter sessions, special licensing sessions, brewster sessions, adjourned brewster sessions, probation case committee meetings and juvenile court panel meetings. The rotas for the courts are given, so that every justice knows when he is due to sit. As to quarter sessions, the year book says: "All justices are entitled to attend quarter sessions and take part in the civil business, but only nine (including the chairman) can sit to hear cases. Quarter sessions compile a rota each year to secure sixteen justices at each sitting (eight for each court). The rota is so arranged that divisions are represented proportionately to the number of justices in each division, so that every justice in the Riding has the opportunity of adjudicating about once every four years . . ."

It is also pointed out that justices may attend petty sessional courts on days other than their rota days, although not more than seven can sit together as a court.

There are also a few brief notes on the scale of imprisonment in default of payment of money, some road traffic offences and on disqualification of justices in licensing matters.

Mr. Stokeld tells us he wonders if other courts have a similar year book, and if so what sort of matter is included. We have not seen many such books but no doubt many are in use, and we feel confident that justices are glad to have them.

Probation in Croydon

The report of the probation committee for the county borough of Croydon for the year 1951, shows that the work is taken seriously. We are by now familiar with testimony from justices and probation officers as to the value of case committees and in this report we find the following statement:

"Since September, 360 case records have been reviewed by case committees, which have been working on a weekly rota in order to overtake some of the arrears of work due to staff shortages. These reviews are of great value in giving the magistrates a closer insight into the work and problems of probation, and give the probation officers the opportunity of obtaining advice on difficult cases.

The full probation committee held nine meetings during the year."

We are always glad to read of readiness of courts to grant a remand for the purpose of inquiry and report before a final decision is taken. Mr. Still, chairman of the Probation Committee draws the attention of justices to a suggestion made by a Home Office Inspector that when a probation order is contemplated there should be remand for a week in order that a probation officer can make a home inquiry and possible recommendations.

Desertion while Parties Under One Roof

It has been established by a number of cases such as *Powell* v. *Powell* [1922] P. 278, that there can be desertion while husband and wife are living under the same roof. As was said in *Pulford* v. *Pulford* [1923] P. 18, desertion is not necessarily a withdrawal from a place but from a state of things. However, there must be a limit upon the extent to which this pronouncement can be applied when the parties are living under the same roof, and justices need to consider carefully the various decisions upon the point when they are asked to hold that a man has deserted his wife when to all outward appearances they are living together.

In *Hopes* v. *Hopes* [1948] 2 All E.R. 920, it was held that while *de facto* separation, which with *animus deserendi* is an essential element of desertion, can exist even while the parties are under the same roof, there can be no such separation until husband and wife cease to share one household and set up two households. This case, which was decided in the Court of Appeal, was referred to in *Baker* v. *Baker* (1952) 213 L.T. 63. This was a petition by the husband who alleged three years desertion by the wife. The evidence showed that the parties had occupied the same house, which belonged to both of them, but each occupied a separate bedroom and sittingroom and they cooked their own food separately. They shared the kitchen and certain other parts of the house. They did not speak except for the business necessities of the day. Upon this, Willmer, J., held it could not be said that the parties had ceased to be one household and had become two separate households, and desertion had not been proved.

The judgment of Denning, L.J., in *Hopes* v. *Hopes*, *supra*, dealt with this question in the light of present day difficulties of housing, and recognized that there could be complete separation of spouses living in the same house just as surely as if they occupied different flats in the same block. But the Lord Justice indicated the limit of this principle: "It is most important to draw a clear line between desertion, which is a ground for divorce, and gross neglect or chronic discord, which is not. That line is drawn at the point where the parties are living separately and apart. In cases where they are living under the same roof, that point is reached when they cease to be one household and become two households or, in other words, when they are no longer, residing with one another or cohabiting with one another."

Constructive Desertion

In *Lane* v. *Lane* [1952] 1 All E.R. 223, the Court of Appeal dismissed an appeal from the Divisional Court upholding a maintenance order made by justices on the ground of desertion. It was an instance of what is commonly called constructive desertion, the wife having left her husband on account of his conduct. After obtaining an order she returned to cohabitation with him, which, of course, put an end to that order, but soon afterwards she left him again and obtained a second order on the ground of similar constructive desertion.

There was some question of condonation and revival, but both Lord Justice Somervell and Lord Justice Hodson dealt with the matter upon a different footing from this. In the course of his judgment, Somervell, L.J., said the reasons which had led to the previous desertion might be of vital importance. If, for example, a wife had been driven out on the first occasion by a course of conduct, the resumption of cohabitation, if the offending spouse was genuine, must clearly be on the basis that he would abstain from repeating such conduct. Any real indication, even over a short time, that such conduct was being renewed might result in constructive desertion, although his present conduct alone without evidence of the past history of the case would be insufficient to establish such desertion.

Hodson, L.J., pointed out that conduct could always be looked at in the light of past history which threw light on it, and acts of minor significance themselves, in the light of past history, might be of serious import. In the present case, the conduct of the husband during and after a resumption of cohabitation could be looked at in the light of his previous desertion to enable the court to form a judgment whether such conduct amounted to constructive desertion.

In hearing matrimonial cases it is often necessary for justices to inquire into the history of the married life of the parties over a lengthy period if they are to appreciate the true significance of the conduct of the parties and do justice between them. This may make the hearing somewhat protracted, but it may be well worth while in order to get at the truth and arrive at a wise decision. *Lane* v. *Lane* emphasizes this principle.

Cart Wheels

We have referred in answering Practical Points to a form of byelaw which makes it an offence, if manure and such things fall from a cart, to leave them upon the roadway, and also to an extension of the byelaw which, in different forms, exists in some boroughs and counties, by which the person in charge of a vehicle is required to remove mud from the wheels, when this is likely to fall from the wheels upon the highway and damage its surface. From a newspaper which has been sent to us, it appears that in the borough of Hemel Hempstead such a byelaw is in force, in a form which would make it an offence for the driver of a vehicle to continue his journey, without removing from the road mud which had been carried on to the road by the wheels of his vehicle, even though he did not know that the wheels were muddy. A lorry driver was convicted, and the conviction has given rise to some adverse comment in the press which, on the facts stated, seems to be not unjustified. We conjecture that the byelaw at Hemel Hempstead cannot be in the model form. The model is in two parts, of which the first requires the person in charge of a vehicle on a highway who knows that mud, clay, lime or similar material has fallen from the vehicle, and is likely if not removed therefrom to cause obstruction or danger to persons using the highway or injury to the surface of the highway, to remove it as completely as is reasonably practicable. It will be seen that knowledge is of the essence of the offence. The second part of the byelaw requires that, before a vehicle is brought upon a highway, the person in charge shall as completely as is reasonably practicable remove from the wheels thereof all mud, clay, lime or similar material, which is likely if not removed from the wheels to cause obstruction or danger to persons using the highway, or injury to the surface of the highway. In the model form (as we have just given it) we do not think the byelaw is open to objection on the ground of reasonableness, as it certainly would be if the provision about knowledge was left out from the first part. This is not, however, to say that we should advocate general adoption of the byelaw. The vehicles most likely to come within its scope are those in use on farms, and we find it a little surprising that, according to our information, the byelaw has been put in force in several agricultural counties. The farm cart has as good a right upon the road as the transient limousine; local authorities might well think twice, before imposing on the farmer and his man the burden of cleaning its wheels—which must get muddy in the course of agricultural work. Where the local authority is fully satisfied that some such byelaw is essential, as we understand it is considered to be with some types of modern road surface, care should at any rate be taken to see that whatever byelaw is adopted is framed in reasonable terms.

GENERAL REQUIREMENTS AS TO RESIDENCE

As long ago as 1927, the Departmental Committee on the Treatment of Young Offenders severely criticized a practice which was said to be common at the time of inserting in a probation order a condition to reside where directed by the probation officer. The report of the Committee said (p. 54): "This seems to us an objectionable form of condition, as it gives the probation officer a much greater control over the liberty and movements of a probationer than he ought in our opinion to possess." At the time the Committee and other critics were particularly concerned with the theoretical incompatibility with probation ("Supervision in the open") of long-term detention in an institution which was not subject to inspection: and the Committee's words were heeded to the extent that approved and inspected homes and hostels were established for probationers of certain age groups, and the courts modified the form at least of the "general condition of residence" by making it a condition "to reside where directed by the court."

In the course of time this practice also came under fire and in the Report of a Departmental Committee on Social Services in Courts of Summary Jurisdiction (1936, p. 67) the views of the Young Offenders Committee were quoted with approval and with added recommendations for limiting institutional residence under probation orders. Another objection raised about this time and up to the passing of the Criminal Justice Act, 1948, was that a general condition to reside where directed even by the court was unsatisfactory. In the first place, the condition was indefinite. A probationer who agreed to its insertion could not possibly know at the time of so agreeing what kind of direction might be given him in the future. He would merely be trusting the court not to direct anything unreasonable, or else would secretly resolve to disobey the court's direction if at the time when it was given he felt disinclined to live in the chosen place. Secondly, nothing was laid down as to how the direction should be given. We believe that some courts devised forms of their own for signature by a justice and service on the probationer, conveying to him in writing any "direction" given by the court. Elsewhere, however, the direction was given orally by the probation officer on the instructions of the probation committee, and in some cases we fear the probation officer gave oral directions in the name of the court on his own initiative. If in such a case it became necessary to bring the probationer before the court for a breach of general condition of residence it must have been difficult or impossible to obtain satisfactory proof of the breach. There were administrative difficulties also, especially in cases where it was sought to obtain payment from public funds in respect of residence under such a condition, there being no documentary record either of the date on which the condition became effective or of the period for which it was to extend.

It was presumably for these reasons that when in the Criminal Justice Act, 1948, the law of probation was revised and consolidated, the opportunity was taken to lay down more specific and stringent rules about the inclusion in probation orders of requirements (as they were now to be called) as to residence. These appear in s. 3 of the Act, after the general power in subs. (3) to include "Such requirements as the court, having regard to the circumstances of the case, considers necessary for securing the good conduct of the offender or for preventing a repetition by him of the same offence or the commission of further offences." Subsection (4) without prejudice to this general provision, permits requirements relating to the residence of the offender, "provided that:

(*a*) Before making an order containing any such requirements the court shall consider the home surroundings of the offender; and

(*b*) Where the order requires the offender to reside in an approved probation hostel, approved probation home or any other institution, the name of the institution and the period for which he is so required to reside shall be specified in the order, and that period shall not extend beyond twelve months from the date of the order."

Proviso (*a*) is no doubt primarily intended to deal with the old dilemma of the incompatibility of "supervision in the open" with institutional residence. Experience having shown that in many cases probation might be a successful method of treatment if only the offender could first be given a short period of elementary training in regular and decent habits of life, the legislature has evidently decided to recognize the need for removal from home—temporarily at least—in some cases and has not thought fit to prohibit it entirely. Instead the courts are required to *consider* the home surroundings first, the intention obviously being to secure that only when the court thinks that probation cannot succeed at home will the offender be removed from home and supervised elsewhere. In this way "supervision in the open" is established as the norm but the courts are given discretion to depart from it in suitable cases.

The effect of proviso (*b*) is to limit the use of this discretion even in those cases where it is properly exercised; its limitations appear to be specially directed against the use of anything approximating to the old "general condition of residence," and it was generally thought that it would result in the abandonment of the practice of including requirements "to reside where directed." We learn, however, that there are still some courts which continue this practice and some probation officers who ask for the insertion of "general requirements," and that both maintain that they are legally justified.

It is true that so long as the requirement is not used to secure institutional residence it does not offend against the letter of the section. We think it is clear, however, from the history of the matter as it has been outlined in this article, that a "general requirement" is contrary to the spirit of the statute. Moreover the practical difficulties which may flow from the use of "general requirements" under the present law are many and may be serious.

The original court may have clear ideas about the use to be made of the general requirement and the circumstances in which it may become necessary, but the supervising court may have different ideas. Even where the original court is also the supervising court at the time when the order is made, it does not follow that this will always be the case. The old difficulty about the method of conveying to the probationer the "direction" as to residence still exists, and any arrangement which the court may have made with its own probation officers on this point will not necessarily apply to the officers of the supervising court. The original court has no guarantee that the requirement will not be used at some later date by the supervising court or even by a probation officer to place the probationer in an institution, and the provisions of s. 3 (7)

as to notifying the Home Office may or may not be observed in such a case.

Previous criticisms of general conditions on the ground of uncertainty apply with increased force to general requirements under the present law. All the probationer knows when he is asked to consent to the order is that he is to live where the court tells him to. We doubt very much whether he is told of the special provision of the Act about the maximum period of institutional residence. " The court " to him is the court which is then dealing with him—he probably has no idea that he is submitting to the direction of the supervising court, in any area in which he may reside during the period of his probation.

We think these objections to be conclusive against the continued use of " general requirements " but even if they were not we can see little positive advantage in the practice. Any more exact requirement as to residence may equally well be inserted at the time when the order is made or later by amendment. It is true that amendment necessitates the issue of a summons to the probationer, but there is little real difficulty in this, especially if the probation officer explains to the probationer beforehand what is proposed. It has been suggested that the general requirement can usefully be invoked if the probationer leaves home without warning and it is desired to prove a breach of the order : but this need is already supplied by a requirement to notify change of address, and in any case the " general requirement " could only be invoked if it could be proved that the probationer had been " directed " to stay at home. We cannot help suspecting that the real advantage sought by the advocates of the " general requirement " is a hold over the probationer which will be stronger than any which is conferred by the statute, because it is less well defined : and if this suspicion is correct there could be no better reason for abandoning " general requirements " completely.

CAB RANKS NOT IN STREETS

A Bill now before Parliament, promoted by the city council of Winchester, contains a proposal which we do not remember to have seen before in a local legislation Bill, a proposal in part questionable, and in part forming what we think should be a valuable precedent. Power is sought to acquire lands specified in the Bill, and use them both as a parking place for vehicles and as a stand for hackney carriages. If the local authority were going to Parliament in any event, seeking power to acquire lands, it was no doubt natural for them to include the parking place proposal. Nevertheless, there is power for this purpose in the general law, and s. 68 of the Public Health Act, 1925, contains safeguards against nuisance to adjoining owners. We should, therefore, in the ordinary way, prefer to see that section used, rather than that recourse should be had to local legislation for providing parking places. If a clause is included in a local legislation Bill, adjoining owners and occupiers who may believe themselves likely to be adversely affected by the provision of a parking place may find difficulty in getting before a parliamentary committee—difficulty both upon the ground of *locus standi* and on the practical ground of the expense of being represented. Section 68 of the Act of 1925, where the general law is used, gives them a right of recourse to the ordinary courts in their own town, and is thus to be preferred. The part of the Winchester proposal which seems a valuable precedent is the including of power to provide a hackney carriage stand. Modern conditions of traffic are making it more and more obvious that the use of streets as places for vehicles to stand is not only uneconomic but is a source of danger. We have from time to time spoken strongly in our Notes of the Week upon what we called the parking scandal ; efforts made, in London and elsewhere, to cope with it seem on the whole to have had but small success. Our readers who have had business in Whitehall, and afterwards have had to get home by train, must find the journey from the Westminster area to any of the main line stations far too much of an obstacle race. The only possible solution lies in keeping vehicles off the highway, when they are not using it for its primary purpose. This applies to hackney carriages as well as to private cars, though it is fair to say that hackney carriages are, in most towns at the present day, much less of an obstacle to traffic, and much less of a danger, than the parked private car. As the law stands at present, local authorities have power to fix hackney carriage stands by byelaws under the Town Police Clauses Act, 1847, but no power to provide land themselves for the purpose. By taking such power in a private Bill, the city council of Winchester are thus (so far as our observation goes) breaking new ground. In most provincial towns today (and we imagine that this is likely to be true of Winchester, which is not a wide-spread city) the hackney carriage proprietor often finds it better business to keep his carriage in the garage, and to go out only when called by telephone from his customer's house or from a call-box. We have, in answering Practical Points and otherwise, expressed the view that this tendency ought not to be resisted by local authorities. A large proportion of potential hirers of cabs have ready access to a telephone, and a person who is prepared to pay a cab fare can seldom be unable to find three pence for a telephone call from a public call-box. Such hardship as there is to a customer, in not finding a cab standing in the street waiting to be hailed, is more than offset by the general convenience, of their being kept off the streets in the interests of other traffic. In so far as there is a case in a particular area for a public stand for hackney carriages, there is much to be said for its being provided by the local authority, on ground not forming part of a street.

Twenty-seven years ago, s. 68 (7) of the Public Health Act, 1925, drew a sharp distinction between parking places and stands for hackney carriages. This distinction was probably justified ; very likely it is still justified, since the whole object of providing a parking place for other vehicles than hackney carriages is to persuade the drivers of those other vehicles not to clutter up the streets. If a parking place could be used by hackney carriages as a place of business, the driver of the private vehicle might be the less disposed to proceed to it and place his vehicle on it. It would, however, be quite consistent with the purpose of s. 68 (7) of the Act of 1925 for the local authority to provide not only parking places but hackney carriage stands. The sacredness, if we may so express it, of the parking place as such has been a good deal blown upon by later legislation, empowering local authorities to adapt their parking places for use by public service vehicles. In fact a position has come about in which, under colour of providing parking places, local authorities can (and do) provide terminal stands for motor coaches. We have nothing to say against this but, on the whole, we think it will be found more practical to treat parking places (for vehicles other than hackney carriages) and hackney carriage stands as separate things—even if (as Winchester proposes and as we should ourselves think un-

objectionable in the general law) a local authority had power to acquire or appropriate land for hackney carriage stands.

Meanwhile, we have been asked by the local authority of a different town whether anything can be done in this last-mentioned direction without new statutory powers. Whilst (as already indicated) the suggestion has in our opinion much to be said for it on merits, we think it right to point out that the law at present presents pretty formidable obstacles. The Town Police Clauses Act, 1847, does not, it is true, say in so many words that hackney carriage stands fixed thereunder are to be in streets. If a local authority fixes a stand upon land vested in itself, not being part of a street, or on land vested in somebody else with the consent of that somebody else (and s. 76 of the Public Health Act, 1925, contemplates this in one sort of case), it seems that the relevant sections of the Act of 1847 will bite upon the stands so fixed. Apparently a vehicle not licensed as a hackney carriage can be used to ply for hire upon such a stand, so far as the Act is concerned : *Jones* v. *Short* (1900) 64 J.P. 247, but presumably the local authority or other owner of the soil could keep it off. If a hackney carriage is in fact plying for hire on such a stand, its driver must under s. 53 of the Act of 1847 accept a passenger at the fare fixed by the local authority's byelaws, if any. So far, there may be administrative complications involved in fixing a hackney carriage stand upon ground which is not part of a street, but there is no legal obstacle. In one case before us at the moment, the council have it in mind to use temporarily as a hackney carriage stand a piece of land acquired for another purpose, which for the time being they cannot use for that purpose. They will appoint it as a hackney carriage stand by byelaw, which will give an opportunity for neighbours or anybody else who may be adversely affected to object before it is used as a stand, and thereafter there need be no trouble, unless objection is taken to whatever paving or other work of maintenance is found necessary. There will be no appropriation, in the formal sense of this word.

Another case we have before us is more difficult. The council there are contemplating use as a hackney carriage stand of land which was acquired after going through the formal procedure of s. 68 of the Public Health Act, 1925, *i.e.*, acquired definitely as a parking place thereunder. Here, there is not merely the problem, whether the paving and other necessary works resulting from the use of one strip for hackney carriages can lawfully be defrayed; there is also a more serious problem, namely that presented by s. 68 (7) of the Act of 1925. It would merely be setting a trap for the drivers of hackney carriages to fix a hackney carriage stand upon a parking place, since they could immediately be prosecuted under the subsection for plying for hire on that stand. It does not seem that, once land has come within s. 68 of the Act of 1925, the council, by merely directing that it shall cease to be so used in fact, can divest it of its character as a parking place. They could do so by a formal appropriation to some other statutory purpose—*e.g.*, if there was an adjoining pleasure ground and they decided to throw part of the parking place into it, but they cannot " appropriate " to a purpose which is not within their powers at all such as providing ground for a hackney carriage stand. For this, new statutory powers seem to be required, and we think the city council of Winchester are to be congratulated upon being the first local authority to seek powers for meeting a need which may in a few years become acute.

THE TOWN DEVELOPMENT BILL, 1952

This Bill presented by Mr. Harold Macmillan (Minister of Housing and Local Government) supported by Mr. Boyd-Carpenter (Financial Secretary to the Treasury) and Mr. Marples (Parliamentary Secretary to the Ministry of Housing and Local Government) was read a first time and ordered by the House to be printed on January 31, 1952. Its principal object is to help local authorities to carry out town development in rural or small urban areas.

Town development is defined in cl. 1 of the Bill as meaning " development in a county district (or partly in one such district and partly in another) which will have the effect, and is undertaken primarily for the purpose, of providing accommodation for residential purposes (with or without accommodation for the carrying on of industrial or other activities and with any public services and other incidentals needed) the provision whereof will relieve congestion or over population elsewhere " (*i.e.*, housing and any necessary industrial, commercial or other ancillary development with a view to providing accommodation for the people from other areas who, because of overcrowding or shortage of land, cannot be housed or rehoused in those areas). With this purpose in mind, the Bill provides for Exchequer assistance towards the cost of town development and for certain extensions and adaptations of existing powers in order to enable local authorities to carry out the development. Clauses 2, 3 and 4 of the Bill relate to Exchequer contributions to the council of a " receiving district " and also contributions from local authorities benefited in respect of town development.

Clause 1 of the Bill defines the expression " receiving district " as meaning the county district in which the development is carried out or, in the case of town development partly in one county district and partly in another, a county district in which part of it is carried out. The objects of the Bill will, therefore, be encouraged by Exchequer contributions towards expenditure incurred by eligible local authorities under the following heads in the carrying out of town development :

(*a*) Rate fund contributions in respect of houses for which Exchequer subsidies are payable under the Housing (Financial and Miscellaneous Provisions) Act, 1946, the standard annual rate fund contribution payable by local authorities is £5 10*s.* 0*d.* for each house provided for a period of sixty years, being one third of the standard annual Exchequer subsidy of £16 10*s.* 0*d.* *per annum* ;

(*b*) Acquisition of land ;

(*c*) Site development ;

(*d*) Provision of main water supplies or sewerage or sewage disposal services ;

(*e*) Payments to water undertakers in connexion with works for making supplies available.

The Exchequer contribution towards these expenses will vary according to the burden on the authority, their ability to meet it, the rate at which development attracting grant under the Bill is undertaken, and certain other circumstances.

There may also be an increase in Exchequer equalization grants under Part I of the Local Government Act, 1948.

By cl. 4 of the Bill councils which will benefit from town development under the Bill are enabled to contribute to the expenses of a " receiving district." Such authorities eligible to participate in this way are enabled by cl. 8 to take certain kinds of action by mutual agreement (*e.g.*, the transfer by one party to another party who are to carry out the development

or part of it, of land possessed by the transferor party which is held by them for a purpose for which the development of that part of it is required).

If the Minister is satisfied that necessary development is held up by the inability or unwillingness of a receiving district council to take the requisite action, cl. 9 (1) of the Bill empowers him to provide by order for the participation in town development of an authority eligible to participate. Such authorities include (cl. 7):

(*a*) The council of a county borough;

(*b*) The council of a county district which is not a receiving district;

(*c*) The council of the county in which the development is carried out or of a county in which part of it is carried out;

(*d*) A joint water or sewerage board.

Clause 10 enables contributions to authorities participating in town development both from the Exchequer and from local authorities benefited.

The Bill does not extend to Scotland or Northern Ireland.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Jones, Byrne, Parker and McNair, JJ.)

SIMPSON *v.* PEAT

Feb. 12, 1952

Road Traffic—Careless driving—Error of judgment—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 12 (1).

CASE STATED by Essex justices.

At a court of summary jurisdiction at Stansted an information was preferred by the appellant, Arthur William Simpson, a police officer, charging the respondent, Roderick Mackay Peat, that he, on July 9, 1951, at Stansted drove a motor car on a road without due care and attention, contrary to s. 12 (1) of the Road Traffic Act, 1930.

It was proved or admitted that at 6.15 *p.m.* on July 9, 1951, the respondent drove a motor car at a reasonable speed in Cambridge Road, Stansted (which was a main road) in the direction of Cambridge and was approaching Chapel Hill, a minor road leading off to his right. A motor cyclist was driving in the opposite direction at a reasonable speed, approaching Chapel Hill on his left. As the two vehicles approached the respondent drove his car to the right, intending to turn into Chapel Hill, and so came into the path of the motor cyclist and a collision occurred.

The justices found that the respondent had committed an error of judgment in thinking that he had left room for the motor bicycle to get through, and, in view of the statement in *Stone's Justices' Manual*, 83rd edn., p. 2160, note (*l*), citing *R.* v. *Howell* (1938) 103 J.P. 9, held that he could not in law be guilty of the offence charged. Accordingly, they dismissed the information and the appellant appealed.

Held, that, if a driver were driving without due care and attention it was immaterial what caused him to do so, and, therefore, he might not be showing due care and attention within the meaning of s. 12 (1) of the Act of 1930 although his lack of care might be due to an error of judgment. References to *R.* v. *Howell*, *supra*, would be best omitted from textbooks, since it laid down no principle of law. The appeal must, therefore, be allowed and the case remitted with a direction to convict.

Counsel: *Milton* for the prosecutor; *Southall* for the defendant.

Solicitors: *Sharpe, Pritchard & Co.*, for *Arthur Morgan*, Chelmsford; *Gedge, Fiske & Co.* for *Floyd & Co.*, Dunmow.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

(Before Lord Goddard, C.J., Jones and Parker, JJ.)

JONES *v.* PROTHERO

February 8, 1952

Road Traffic—Failing to report accident—"Driver"—Engine of vehicle stopped when accident occurred—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 22 (2).

CASE STATED by Carmarthenshire justices.

At a court of summary jurisdiction at Llanelly an information was preferred by the respondent, William Prothero, a police officer, charging the appellant, Richard Jones, with being the driver of a motor vehicle and failing to report an accident, contrary to s. 22 (2) of the Road Traffic Act, 1930. The appellant, after driving the vehicle, had stopped on his nearside of the road and switched off his engine and applied his brakes. After talking for about ten minutes to a passenger in the car, he opened the driver's door on the offside and, in so doing, struck a pedal cyclist. The justices convicted the appellant, who appealed to the Divisional Court, where it was contended that, as the appellant had stopped the engine of the vehicle, he was not the driver.

Held, that for the purpose of s. 22 (2) a person who started on a journey as driver remained so till the conclusion of the journey; the decision of the justices was right; and the appeal must be dismissed.

Counsel: *J. Scott Henderson, Q.C.*, and *Skelhorn* for the appellant; *Elson Rees* for the respondent.

Solicitors: *A. J. A. Hanhart*, for *W. Davies & Jenkins*, Llanelly; *R. I. Lewis & Co.* for *Leslie Williams*, Llanelly.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. *v.* ST. HELENS AND AREA RENT TRIBUNAL. *Ex parte* PICKAVANCE

Feb. 12, 1952

Rent Control—Furnished houses—Application by tenant for reduction of rent—Decision of tribunal—Expiry of three months—Notice to quit served by landlord—Application by tenant for security of tenure—No jurisdiction of tribunal—Certiorari—Furnished Houses (Rent Control) Act, 1946 (9 *and* 10 *Geo.* 6, *c.* 34), *s.* 5—*Landlord and Tenant (Rent Control) Act*, 1949 (12, 13 *and* 14 *Geo.* 6, *c.* 40), *s.* 11 (1).

MOTION for order of *certiorari*.

The tenant, William John Leyland, had a weekly furnished tenancy of a house, 51, Rodney Street, St. Helens, Lancashire, of which the applicant, Mrs. Ethel Pickavance, was the landlord, from August 1, 1948, at £1 a week. On August 1, 1950, the tenant applied to the St. Helens Rent Tribunal to reduce the rent, and on September 8, 1950, they gave their decision, making no change in the rent and no order as to security of tenure. On December 9, 1950, one day after the expiration of a period of three months after that decision, the landlord served a notice to quit on the tenant, to take effect on December 18. The tenant then applied to the tribunal for security of tenure, which he was granted. Further extensions were granted at intervals, and with regard to the latest of these the landlord applied for an order of *certiorari* to quash the decision of the tribunal granting security of tenure as having been made in excess of jurisdiction.

Held, reading together s. 5 of the Furnished Houses (Rent Control) Act, 1946, and s. 11 (1) of the Landlord and Tenant (Rent Control) Act, 1949, only a limited protection was given by those subsections to a tenant, designed to prevent retaliation by a landlord in the form of a notice to quit as soon as the tenant had referred the contract to the tribunal; a landlord was within his right in giving notice to quit after the expiration of three months from the date of the decision of the tribunal, the parties being then relegated to their common law rights; and, therefore, the order for extension was made without jurisdiction and *certiorari* must issue.

Counsel: *John Harington* for the landlord; *J. P. Ashworth* for the tribunal.

Solicitors: *The Solicitor, Ministry of Health*; *Neve, Beck & Co.* for *Joseph Davies*, St. Helens.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MOWE *v.* PERRATON

February 7, 1952

Road Traffic—Taking and driving away vehicle without owner's consent—Servant in charge of master's vehicle—Unauthorized journey outside course of employment—Road Traffic Act, 1930 (20 *and* 21 *Geo.* 5, *c.* 43), *s.* 28 (1).

CASE STATED by West Kent Quarter Sessions.

An information was preferred by Reginald Perraton, a police officer ("the prosecutor"), charging John Clifford Mowe ("the defendant") with taking and driving away a motor vehicle without the consent of the owner or other lawful authority, contrary to s. 28 (1)

of the Road Traffic Act, 1930. The justices convicted the defendant, who appealed to West Kent Quarter Sessions, where the following facts were established.

The defendant was the driver of a lorry which belonged to the Road Haulage Executive and was under hire to the Royal Army Service Corps at Woolwich Arsenal. The defendant's duty, after he had finished work, was to drive the lorry back to a garage at Woolwich Dock. On the day of the alleged offence the defendant, after leaving Woolwich Arsenal, drove to his own home, where he picked up a radiogram and set out in the lorry with the intention of taking the radiogram to the house of a relative and then driving the lorry to the garage. He was stopped by the police after he had left his house. Quarter sessions allowed the appeal, and quashed the conviction, and the prosecutor appealed to the Divisional Court.

Held, that, though the defendant, by driving the vehicle on an unauthorized journey and on a frolic of his own, might have rendered himself liable to a charge of driving an uninsured vehicle, quarter sessions were right in holding that he had not committed an offence under s. 28 (1) which was intended to deal with the taking by a person of a motor vehicle which did not belong to him, and, therefore, the appeal must be dismissed.

Counsel: *Buzzard* for the prosecutor; *John Gower* for the defendant.

Solicitors: *The Solicitor, Metropolitan Police*; *Francis W. Beech & Taylor*, Eltham.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

PROBATE, DIVORCE AND ADMIRALTY DIVISION

(Lord Merriman, P., and Karminski, J.)

POOLEY v. POOLEY

January 21, 1952

Husband and Wife—Maintenance order—Subsequent petition for divorce—Application for alimony pendente lite—Jurisdiction to discharge order.

APPEAL by the wife against a decision of the Leeds stipendiary magistrate, dated September 27, 1951, dismissing her application to discharge a maintenance order in her favour made on November 26, 1946, on the ground of her husband's desertion.

On September 29, 1950, the wife filed a petition for divorce, and in her petition she applied for alimony *pendente lite*. She sought the discharge of the magistrate's order to avoid the existence of two concurrent orders for maintenance, but the magistrate held that he had no jurisdiction in the matter because there was a petition pending in the Divorce Court.

Held, that the wife might apply to the magistrate to discharge his order since his jurisdiction in dealing with her application did not conflict with the jurisdiction of the Divorce Court.

Counsel: *D. H. Robson* for the wife; *Stogdon* for the husband.

Solicitors: *Ludlow, Head & Walter*, agents for *Willey Hargrave & Co.*, Leeds, for the wife; *Louis Godlove & Co.*, Leeds, for the husband.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 15.

A STOWAWAY IS GAOLED

A Spanish miner appeared before the Bristol magistrates last month, charged with stowing away on a British ship in Ceuta harbour in December, 1951, contrary to s. 237 of the Merchant Shipping Act, 1894.

For the prosecution, it was stated that the defendant had told the immigration authorities at Avonmouth that he had been a miner for five years in Northern Spain and had heard that there were jobs for miners in England. Defendant had remained hidden for two days after the ship left Ceuta and thereafter had worked during the remainder of the trip.

Defendant, who pleaded guilty, was sentenced to twenty-one days' imprisonment and was told that during his imprisonment arrangements would be made for his repatriation.

COMMENT

Section 237 of the Act of 1894 provides that a person who secretes himself and goes to sea in a ship without the consent of the owner or person in charge of the ship may be punished by four weeks' imprisonment of a fine of £20. Subsection 2 of the section enacts that an offender, so long as he remains on the ship, shall be deemed to belong to the ship and thus be liable to the same laws and regulations for preserving discipline, and to the same fines and punishments for offences constituting a breach of discipline, as if he were a member of the crew.

It will be recalled that the provisions of s. 237 received the careful scrutiny of the Divisional Court in *Robey* v. *Vladinier* (1935) 99 J.P. 428. In that case, a national of Yugoslavia, who had boarded a British ship at Oran as a stowaway, was later prosecuted for the offence when the ship returned to London.

A Metropolitan stipendiary magistrate declined to convict on the ground that a court of summary jurisdiction had no jurisdiction to try offences committed by any person, not being a British subject, on board a British ship in a foreign port or harbour.

The Divisional Court found little difficulty in deciding that the conclusion was wholly erroneous, and Lord Hewart, C.J., pointed out that the offence does not consist in secreting only nor in going to sea only. "The offence," said the Lord Chief Justice, "consists in secreting *and* going to sea and is a continuing offence." Lord Hewart drew attention to the provisions of s. 686 of the Act, which gives jurisdiction to British courts over aliens who commit offences on board British ships on the high seas, as clinching the view of the court that the learned magistrates had erred in declining jurisdiction.

R.L.H.

No. 16.

THE BURGLAR ALARM WORKED OVERTIME

A limited company was summoned to appear at North London Magistrates' Court on January 24, 1952, to answer an alleged contravention of a London County Council byelaw dated January 26, 1932, which prohibits the prolonged ringing of alarm bells.

For the prosecution, it was stated that the complainant, who lived in a pre-fabricated house fifteen yards from the defendant company's premises, heard a burglar alarm ringing nine times for prolonged periods, on some occasions for five hours, in the middle of the night. The complainant stated that the bell rang mostly on Saturdays and Sundays and that he had had to get up in the middle of the night and make 'phone calls about it. A police constable stated that he had twice called on the defendant company and on each occasion he had been told that the alarm was being seen to.

The company was granted an absolute discharge, and Mr. W. Blake Odgers, K.C., made an order under s. 11 (2) of the Criminal Justice Act, 1948, for payment by the defendant company of £3 3*s*. compensation to the complainant.

COMMENT

The byelaw provides that if any alarm bell or other similar instrument designed to operate automatically causes a prolonged ringing or continuous noise so as to occasion annoyance to the inhabitants of the neighbourhood, the occupier, tenant or lessee of the premises from which the noise is emitted shall be liable to a penalty not exceeding £5.

The byelaw contains a proviso that it shall not apply to bells, instruments or apparatus used for the purpose of giving an alarm for fire.

The Deputy Chief Clerk, North London Magistrates' Court, to whom the writer is indebted for this report, states the offences under this byelaw are not infrequent and that he can remember four or five within the last two years.

R.L.H.

No. 17.

PERMITTING PREMISES TO BE USED AS A BROTHEL

A fifty-eight year old spinster was charged at Salisbury Magistrates' Court recently with knowingly permitting one of the rooms of a hotel owned by her to be used as a brothel, contrary to s. 13 of the Criminal Law Amendment Act, 1885.

For the prosecution, it was stated that between September and November of last year, observation had been kept at the premises—inside by a police officer in plain clothes and outside by numerous other officers. For a considerable period police officers had seen a woman they knew entering the hotel on each night of their observations, and on each occasion she was accompanied by a different man. The police officer inside had seen the woman go to a room, sometimes a bathroom, with these men, who for the most part had been seen by him next morning either coming out of the bathroom or at the breakfast table.

The police constable who stayed in the hotel, gave evidence of what he had seen during various occasions upon which he had stayed at the hotel, and added that on an evening in November, after he had seen the woman and a man both go into a bathroom and bolt the door, he went back to his room and signalled with his torch to other police officers who arrived at 12.55 *a.m.* A detective inspector, who stated

that the woman who came to the hotel was of immoral character, added that he called at the hotel after midnight and informed defendant that he was going to search two of the rooms in which he believed women were present. In a lounge on the ground floor, he saw a woman in bed with a man, and on going to the bathroom door he ordered that it should be opened. The woman previously referred to was in the room with a man and there was a bed in the bathroom.

A detective constable stated that defendant said to him at the police station : " I know she was bringing different men but I did not realize it was wrong. That sort of thing goes on in every hotel. You don't have to ask if they are married ; so long as they sign the register that is all that matters. You know yourself what sort of thing goes on."

Counsel for the defence submitted that there was no case to answer. He urged that one immoral woman did not make a brothel. The bench retired to consider the submission and then overruled it.

Defendant gave evidence on her own behalf and stated that she had spent most of her life as a reception clerk in good class hotels. She bought, contrary to the advice of her solicitor, the tail end of a lease of the hotel in Salisbury in January 1951, for £1,750. The lease had only four and half years to run and altogether she had invested £2,750. She found that among her visitors at the hotel was the woman about whom the police had given evidence and heard rumours about her. She spoke to the woman about these rumours and the woman told her that she had reformed and defendant took her word for it. She had no idea that the woman was sleeping with different men in the hotel.

Counsel for the defence urged that defendant had found herself quite incapable of carrying on the business. She was a sheltered and rather weak creature and was a suitable person for the immoral female visitor to utilize.

The court found the case proved and fined defendant £25.

COMMENT

The penalties provided by s. 13 of the Act of 1885 have been considerably stiffened since they were first imposed. The Act of 1885 provided for a maximum penalty of three months' imprisonment or a fine of £20 upon first conviction and for four months' imprisonment or a fine not exceeding £40 on a second or subsequent conviction. Section 4 of the Criminal Law Amendment Act, 1912, increased the maximum penalty upon a third or subsequent conviction to twelve months' imprisonment or a fine of £100, and s. 3 of the Criminal Law Amendment Act, 1922, provided that a first offence might be punished with three months' imprisonment or a fine not exceeding £100.

It was decided in *Ex parte Burnby* [1901] 2 K.B. 458, that as the offence is a continuing one, the information may allege that the offence was committed on divers dates and times between dates within six months.

PENALTIES

Gravesend—January, 1952—being in unauthorized possession of 13 *lb.* of veal for the purpose of trading meat for human consumption—fined £200. Defendant, an alderman and former mayor, admitted fourteen previous convictions including a fine of £250 inflicted seven days earlier for illegally killing a sheep.

Dudley—January, 1952—(1) assaulting a bus driver, (2) impeding passengers on a public service vehicle, (3) disorderly conduct—(1) fined £5, (2) fined £1, (3) fined £1. To pay £5 3*s.* costs. Defendant, a twenty-three year old labourer, refused to move inside a bus and when spoken to by the driver struck him a violent blow in the mouth breaking his false teeth in three places.

West Bromwich Quarter Sessions—January, 1952—indecent assault—twelve months' imprisonment. Defendant, a bus conductor, called at the house of a fellow conductor at 11 *p.m.* whilst his colleague was still on duty. The colleague's wife let him in thinking it was her husband and he then assaulted her. Defendant's wife expecting her fifth child in a few days' time.

Hampshire Quarter Sessions—January, 1952—dangerous driving—fined £150. To pay costs not exceeding £75. Disqualified for driving for seven years. Defendant, an Army officer, collided with a motor-cyclist who died.

Alfreton—January, 1952—personation by voting as proxy for a dead son—fined £20. To pay £5 5*s.* costs. Defendant, a retired naval commander.

Northamptonshire Quarter Sessions—January, 1952—stealing an electric motor and a carpenter's vice value £4 10*s.*—six months' imprisonment. Defendant a police constable at the time he committed the offence.

West Riding Quarter Sessions—January, 1952—breaking into a workshop and stealing tools value £2 10*s.*—twelve months' imprisonment Defendant, a police constable at the time he committed the offence, asked for three offences of workshop breaking and theft and one of breaking into a workshop with intent, to be taken into consideration.

Thornbury—January, 1952—selling milk above the maximum price—fined £10. To pay £5 8*s.* 6*d.* costs. Defendant sold an inspector a pint of what purported to be Guernsey milk for 6½*d.* Analysis showed that the milk contained 3.45 *per cent.* butter fat whereas the minimum for Guernsey milk is four *per cent.*

Gloucester—January, 1952—(1) driving a car while disqualified, (2) no insurance, (3) no licence—(1) four months' imprisonment, (2) three months' imprisonment (concurrent), (3) fined £1. Defendant, a fifty-four year old temporary civil servant, drove to see a sick brother.

Croydon—January, 1952—causing unnecessary suffering to forty-six fowls by keeping them in unreasonably overcrowded confinement—fined £2. To pay £3 3*s.* costs. The birds were stored in four containers, containing room for no more then twenty-seven. Some of the fowls had to rest upon the backs of others.

NEW COMMISSIONS

DENBIGH COUNTY

Thomas Lewis Blackshaw, 13, Park Place, Adwy, Coedpoeth.
Mrs. Edna Eileen Bowen, Siamber Wen, Llangollen.
Miss Margaret Morrison Copland, Bryn Estyn Road, Rhosnesaney.
Dr. Eileen Davies, Bryn, Old Colwyn.
John Rees Davies, Argoed, Cerrig-y-Drudion.
Mrs. Dorothy Stanley Evans, Kilhendre, Gresford.
Philip Geoffrey Gadd, Cherrycroft, Dinerth Road, Colwyn Bay.
Henry David Wynn Griffith, Gwydyr, Llanrwst.
Haydn Hartley, Greenfields, Overton Bridge.
Miss Florence Katie Jones, Rhianfa, Lwyd Grove, Colwyn Bay.
Griffith Trevor Jones, Tyn-y-Ffynnon, Pandy Tudur, Abergele.
Miss Margaret Gwendolen Jones, Rhianva, Ruthin.
William Jones, Hafren, Llangollen.
Kenneth Martyn Maxwell, Colomendy Hall, Mould.
William Richards, Bwlchyrhiw, Llansilin.
Amos Phillips, Glanllyn, Glynceiriog.
Edward Arthur Roberts, London House, Cerrigydrudion.
Mrs. Eleanor Lloyd Roberts, 28, Clwyd Street, Ruthin.
Archibald Henry Salt, 159, Abergele Road, Colwyn.
Samuel Vaughan, 32, High Street, Southsea.
Samuel Williams, Enderby, Bangor Road, Johnstown.
Thomas Moreton Williams, Penybryn, Llangedwyn.
Mrs. Joan Wood, Maes-y-Nant, Marchwiel.

YORKS (WEST RIDING) COUNTY

Mrs. Phyllis Mary Booth, Barkston Towers, Tadcaster.
Thomas Stanley Bradbury, Owston Estate Office, Askern, Doncaster.
Mrs. Marion Jessie Bromley, Sunny Bank, Park Avenue, Castleford.
Lewis Calvert, Bath House, Scissett, nr. Huddersfield.
Newton Clough, 17, Highfield Crescent, Baildon.
Mrs. Edith May Daykin, 13, Moorshutt Road, Hemsworth, nr. Pontefract.
Joseph Dearden, The Beeches, Scawthorpe, Doncaster.
John Thomas Foley, 50, Oak Street, New Crofton, nr. Wakefield.
Mrs. Alice May Grylls, Springwood, Cleckheaton.
Robert Henry Haigh, 35, Hawthorne Crescent, Mexborough.
Charles Hanby, Old Station House, Thorne, nr. Doncaster.
Oswald Hill, 89, Bolton Toad, Silsden, nr. Keighley.
Fred Hoyland, 9, Park Street, Swallownest, Sheffield.
William Alan Jenkins, Sledgate Drive, Wickersley, Rotherham.
George William Kenny, 8, Thrislington Square, Moorends, nr. Doncaster.
Mrs. Mary Kilner, Hopton Court, Mirfield.
Mrs. Annie Lodge, 26, Hilltop Estate, Heckmondwike.
Mrs. Doris Manning, Station Road, Hemsworth, nr. Pontefract.
John Marshall, Bentham Hall, Bentham, via Lancaster.
Reginald Edward Morrell, Slade Hooton Manor, Laughton, nr. Sheffield.
John Male Oddie, Freckleton Garth, Benton Hill, Horbury, nr. Wakefield.
Stanley Palmer, 37, Lyttleton Crescent, Cubley, Penistone, nr. Sheffield.
Frederick Horace Pawson, 14, Arundel Avenue, Treeton, Rotherham.
Mrs. Eva Ratcliffe, 182, Highgreave, Ecclesfield, Sheffield, 5.
Mrs. Sarah Jane Redshaw, Newlands, High Street, Heckmondwike.
Percy Harold Roberts, Three Lane Ends, Whitwood Mere, Castleford.
George Redvers Tinker, Edgehill House, Thurlstone, Penistone, nr. Sheffield.
Miss Helen Kathleen Todd, Kingswood, Langley Avenue, Bingley.
Thomas Norman Walls, Wingthorpe, Priesthorpe Lane, Bingley.
Joseph Winfield, 3, East View, Micklefield, nr. Leeds.
Mrs. Rosemary Yates, Colton Lodge, Tadcaster.

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

THE SUFFIX J.P.

Referring to the end of the second paragraph at 115 J.P.N. 817, your remarks do not seem to accord with the practice in the *London Gazette* to which I would refer you. The practice there seems to be to put the suffix last.

Yours truly,
I. S. DALGLEISH.

4 Deerstead House,
St. John's,
Woking.

[There can, we imagine, be no editorial rule in the *Gazette*, since the notices published come chiefly from named sources, which take responsibility for their form. Examination of a number of such notices shows, indeed, that in this matter practice is not uniform. The letters J.P. are, however, placed last in enough notices coming from "Crown" sources to support the usage of so placing them if this is preferred, whilst others support the usage we prefer ourselves.—*Ed., J.P. and L.G.R.*]

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

A COSTLY FAMILY

In my opinion the paragraph in your issue of January 19, 1952, under this heading is unfortunately worded, and may confuse thought on a problem of considerable importance.

That paragraph refers to the case of a man with a wife and six children against whom my council had applied for orders for maintenance. The family had been evicted from a corporation house in Middlesbrough and placed in institutions at a total cost of £23 a week. The stipendiary magistrate made orders totalling £3 12*s.* a week so that public funds provide something approaching £20 a week.

Your comment was as follows: "We do not suggest that a man earning £6 10*s.* a week as this man was, would find it easy to maintain such a family, even with the help of the family allowance, but we have little doubt that many families are managing on such an income. In this case, for all we know, there may have been illness or some unexpected expense which caused the rent to become in arrear. Be that as it may, it seems a thousand pities that the family should be broken up and maintained in various institutions when, on the face of it, it would seem that some assistance on a modest scale might have kept the family together and saved a considerable amount of public money. There may be a perfectly good explanation, but until the public learns what that explanation is it will be suggested that the system must be wrong somewhere."

The family were evicted not only on account of arrears of rent, but also because the house was very dirty. So far as can be ascertained there was no illness or other unexpected expense which is rather borne out by the fact that the family had not applied for or been granted National Assistance.

The family had to be broken up because residential accommodation, other than a similar house, was not available for such a family, and present restrictions on capital expenditure are such that this state of affairs cannot be remedied quickly. A scheme for housing such people in lower standard houses, with possibly a warden in charge, is still on paper and not a reality. My council take the view that some sanction must exist for the enforcement of the payment of rent and the orderly maintenance of council property, in accordance with the normal tenancy conditions. You may, or may not, be aware that tenants of adjoining property frequently express strong desires, and my council support them, for protection against bad neighbours. After continued default there is no other effective sanction than eviction, and so this may have to be done, even though a loss may be incurred in an individual case.

The problem is well known but not easy to solve. The only way in which "assistance on a modest scale" might be given in such cases would be by the adoption of a rent rebate scheme, such that a man with a wife and six children earning £6 10*s.* per week would pay less than the rent charged, which was 17*s.* 6*d.* per week including rates. My council do not operate a rent rebate scheme; the difficulties are well known and a considerable burden would be placed on other tenants or on ratepayers if a scheme were adopted reducing materially the rent charged in circumstances similar to those outlined above. In any event it is doubtful whether a lower rent would have been paid regularly, and a rebate of rent would not have assisted in keeping the home reasonably clean.

By your remark that there may be a perfectly good explanation you imply that *prima facie* a wrong has been done. A responsible journal should not give such an impression on no other basis than a trifling suggestion that modest assistance (the nature of which is not specified) *might* have kept the family together.

Yours faithfully,
E. C. PARR,
Town Clerk.

Town Clerk's Office,
Middlesbrough.

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

I have been interested in P.P. 15 at p. 47, in connexion with the provision of accommodation by river boards for their staffs.

This board is the successor (*inter alia*) of two fishery boards who, when in office, provided cottages for their bailiffs. Practically in all cases it was necessary for these fishery boards to raise loans to cover the expenditure involved, and consequently applications were made to the Ministry of Agriculture and Fisheries under s. 56 of the Salmon and Freshwater Fisheries Act, 1923. The whole facts were explained to the Ministry, and on all occasions the department treated the matters as coming within the provisions of that Act and appropriate consents were issued.

Your correspondents, therefore, may wish to know that, in so far as the provision of cottages for bailiffs is concerned, the department at least recognize that it is a function which can be performed as incidental to the general functions conferred by the 1923 Act.

Yours faithfully,
E. A. GRIFFITHS,
Clerk of the Board.

South West Wales River Board,
5, Queen Street,
Carmarthen.

NOTICE

A lecture on Structure and Main Divisions of French Law as opposed to English Law, by Professor Rene David, Professor of Comparative Civil Law, University of Paris, will be given at King's College, Strand, W.C.2, at 5.30 *p.m.* on Wednesday, February 27, 1952. The Chair will be taken by Professor R. H. Graveson, Professor of Law and Dean of the Faculty of Laws in the University of London. Admission free, without ticket.

POPULAR MISCONCEPTIONS OF THE LAW—I

1

That a leading question
Is a rather pointed suggestion.

2

That Affidavits aren't governed by
The rules of evidence that ordinarily apply.

3

That you needn't really mean
What you say under Order 14.

4

That if you read selected passages from a letter
Your case will sound better.

J.P.C.

REVIEWS

The Newgate Calendar, Edited and selected by Sir Norman Birkett. London : The Folio Society. Price 17s.

This is much more than a collection of gruesome crime stories, though in truth there is plenty of horror and brutality in the book. Lord Justice Birkett has selected the trials from the eighteenth century records, and to most of them he has appended a note which, however brief, is illuminating and thought provoking. These notes are in pleasant contrast to the sometimes smug homilies of the original editors which no doubt found approval in their day, but must be distasteful to many present day readers.

During the period covered, which is from 1700 to 1780, capital punishment was being inflicted with publicity and inhumanity. It was, as Lord Justice Birkett observes, imposed almost as freely as a magistrate now imposes a fine of 40*s*. The eighteenth century is attractive in retrospect for many reasons, but not for its penal methods. Lord Justice Birkett writes : " The trials here set out exhibit the criminal law in what we now regard as a barbaric and even savage state." The savagery of the law evidently failed to achieve its object. The thought of capital punishment so frequently inflicted for so many offences did not turn the evil-doers from their ways, and the public evidently became callous. The remarkable case of " Half-hanged Smith," who was actually hanged, cut down after nearly a quarter of an hour and resuscitated when a reprieve arrived, and who soon returned to housebreaking, the very crime for which he was condemned, shows how little deterrent effect the almost indiscriminate use of the death penalty had at that time. Lawlessness flourished because there were no trained and organized police, and dwellers in lonely places were subjected to terror and violence at the hands of gangs of blackguards. Criminals could often count on immunity from detection and capture, and the laws only answer was increasing severity to the convicted. Fortunately, towards the end of the century, reformers emerged who stirred the public conscience, and such a case as that of poor Dr. Dodd, hanged for forgery in circumstances which excited widespread pity, helped to bring home to ordinary people the urgent need for a better penal system.

The trials here recounted are in great variety, from such cases as those of the Scottish peers for treason in the 1715 rebellion, to cases of murder, piracy, perjury, bigamy, housebreaking and receiving. The case of Richard Turpin shows him and his associates as a band of brutal, violent scoundrels, and the romance attaching to his exploits is evidently founded more on fiction than on fact. Sir Norman Birkett deflates his reputation in simple language : " This rather ordinary criminal seems to have made a bigger noise in the world than his exploits warrant." The notorious Jonathan Wild, immortalized by Henry Fielding, naturally finds a place in this list of outstanding villains. The trial of the Duchess of Kingston, a leading case in the textbooks, comes as a welcome relief from sordid crime of violence and as a picturesque description of what was in reality a solemn farce, though it had some value in settling some points of law, for which it is still cited. Eugene Aram's trial and conviction for murder is well-known because of Thomas Hood's poem, but its interest here consists largely in the prisoner's elaborate arguments in his own defence. The shortest account in the book is that of the trial of Catherine Jones for bigamy. She was acquitted upon as remarkable a ground as can well be imagined. She insisted that the first ceremony was invalid, her " husband " being an hermaphrodite, who had been shown as such at fairs and who came to court and admitted the fact.

Sir Norman Birkett's Introduction, short as it is, is full of interest. For instance, not many people nowadays know that Benefit of Clergy existed until 1827, or that the address to a person convicted of felony, in which the clerk asks him if he has anything to say why sentence should not be passed upon him, has its origin in the fact that it was at this point that the accused might plead Benefit of Clergy. We can see something of the Lord Justice's own attitude towards the problems of penal administration from his assertion that the Criminal Justice Act, 1948, is the great contribution of the present generation to the wholesome and necessary work of reform. Finally he writes : " More and more will the idea of the reform of the offender and most particularly the reform of the *young* offender gather support, for it is now seen that although some offenders are beyond the reach of reform, nevertheless it is in reformation that the best hope lies of genuine and lasting advance in the campaign against crime."

ERRATUM

In our issue for February 9, 1952, it was incorrectly stated that the late Mr. C. D. Benson had occupied the office of clerk to the justices, Banbury, for the past twenty-five years. Mr. Benson was, in fact, clerk to the late Mr. E. L. Fisher, who was clerk to the justices for the county petty sessional division of Banbury and Bloxham.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

ENTERING PRIVATE PREMISES

Miss Irene Ward (Tynemouth) asked the Minister of Fuel and Power in the Commons what action he proposed to take on the recommendation of the North Thames Gas Consultative Council that the 1948 Gas Act should be amended to provide that a police officer must accompany any official sent to force entry into private premises.

The Minister of Fuel and Power, Mr. Geoffrey Lloyd, replied in a written answer that, although the provisions relating to forcible entry by officers of gas undertakings had remained virtually unchanged since 1871, he thought there might be grounds for their modification. He was examining the possibility of bringing those powers into line with more recent legislation.

LIMITATION OF ACTIONS LAW

Mr. J. Wheatley (Edinburgh, E.) asked the Secretary of State for Scotland whether Her Majesty's Government would introduce legislation to amend the law relating to limitation of actions in Scotland.

The Secretary of State for Scotland, Mr. J. Stuart, replied that he could not indicate a prospect of early legislation on that subject.

LAW OF SUCCESSION

Mr. Wheatley asked the Secretary of State for Scotland whether Her Majesty's Government would introduce legislation to amend the law of succession in Scotland.

Mr. Stuart replied that that matter was at present being considered and it was hoped to make a statement about it at an early date.

NOTICES

The next court of quarter sessions for the borough of Southend-on-Sea will be held on Tuesday, March 11, 1952, at 10.30 *a.m.*

The next court of quarter sessions for the borough of Shrewsbury will be held on Tuesday, March 11, 1952, at the Shirehall, at 11 *a.m.*

AUSTERITY AND ITS BLESSINGS

The Chancellor of the Exchequer has warned us of the prospect of more restrictions on food supplies—particularly those that have to be imported—and his proposals in this connexion have been ingeniously dovetailed with modifications in the cost of the social services under the National Insurance Act. The meat-ration is likely to be severely curtailed, but at the same time the cost of purchasing the instruments of mastication is to be fully maintained and perhaps increased; there will probably be less sweets and chocolates, but addicts to this form of indulgence will be able to console themselves with the thought that the necessity of visits to the dentist, for which a substantial charge is now to be made, will thereby be rendered less frequent. Foodstuffs of all kinds will be more difficult to obtain, but the shortages will be compensated by the new charges for medicines, a large proportion of which go to correct evils of over-eating. The necessity for saving dollars will doubtless lead to a reduction in the import of canned goods, and this will be all to the good, since the humble and overworked tin-opener is bound to be in short supply as a result of the demand for steel in the production of armaments. Thus the Law of Diminishing Returns secures new pride of place in the economic code, and all is for the best in the best of all possible worlds.

In the realm of luxuries the advantages of austerity are still more strikingly exemplified. The proposed restrictions on hire-purchase transactions, and on the manufacture of radio and television sets, coincide conveniently with the forebodings of sociologists on the domestic and educational drawbacks of excessive "viewing" and "listening-in"; the lower production of motor-vehicles will bring solace to those who are concerned with the problem of traffic-casualties on the roads. The prospect of reduced imports of tobacco can only be welcomed by a population which has recently received solemn warning, from the pundits of the medical profession, of the dangers of smoking to lungs and digestive organs. And, finally, the cutting of the sterling allowance for foreign travel will afford a very salutary protection to the high principles of the Englishman against the demoralizing effects of too close a contact with the carefree, happy-go-lucky *joie de vivre* of Continental peoples who enjoy food of all kinds in abundance and regard a bottle of wine as an indispensable accompaniment to every meal.

This last-mentioned point is of paramount importance, for the practice of abstemiousness is, for the Englishman, no mere question of economic necessity, but almost a matter of religious observance. Foreigners have observed that we take our pleasures sadly, and our greatest modern writer, George Bernard Shaw (who was, of course, English only by adoption) has told us that the Englishman thinks he is being moral when he is merely uncomfortable. Easy-going visitors from the Latin countries raise their hands and lift their eyebrows in consternation at our barbarous native practices of taking cold baths, flinging windows wide open to all sorts of weather, encouraging our women in "dieting" and "slimming," living in houses with sash-windows and ill-fitting doors which let in draughts from all directions, and sitting in rooms equipped with open fireplaces, which heat a small area and leave the rest at a temperature just above freezing-point. They recognize, with a tolerant shrug of the shoulders, the extraordinary fact that the Englishman is not only resigned to but is actually proud of his abominable climate; they observe with a shudder the spectacle of misguided natives drinking water with their meals and afterwards swallowing cups of a muddy and poisonous decoction mendaciously described as coffee. Many a Frenchman has returned home convinced that all this is a symptom of some masochistic perversion, but to the Englishman these things are as natural as the damp and foggy air which, for the greater part of the year, he breathes; far from resenting discomfort, he derives therefrom a feeling of superiority and, beneath his polite exterior, regards the soft self-indulgence of the foreigner with a tolerance not entirely unmixed with contempt.

Austerity, nevertheless, may be carried to excess. One is reminded of the story of the frugal Irish peasant who, in a year of drought, elaborated a method of pasturing his donkey without recourse to the purchase of expensive fodder. He described to his admiring friends how he had fitted the animal with a pair of spectacles equipped with green lenses, and fed him on wood shavings. At the end of a fortnight he was asked how the experiment was succeeding. "Everything was going foine," he explained sadly, "only the poor baist happened to die."

Cynics will perhaps suggest that we in this country are merely making a virtue of necessity, which may have similarly unfortunate results. It cannot, however, be denied that, in a hedonistic age, the Englishman subconsciously preserves some vestige of the old belief that mortification of the body is good for the soul. The rugged characters who appear in the prophetic books of the Old Testament provide many examples, and the tradition of fasting, sackcloth and ashes, which was carried on by Augustine and other early Fathers of the Church, is implicit in the teachings of Luther, Calvin and Knox, and of the Puritans and Evangelists of the seventeenth and eighteenth centuries. In the pre-War world of plenty, political prisoners won public sympathy by what was called "hunger-striking," though this form of recalcitrance, and still more the retaliatory "forcible feeding," sound strangely to our ears today. It is not so long, however, since the austere life of the late Mahatma Gandhi exerted a spiritual influence which extended far beyond the ranks of his coreligionists and won the respect and admiration of Englishmen who were once his bitterest political opponents.

An English proverb tells us that low living promotes high thinking. If our English Shakespeare is to be believed, Julius Ceasar thought differently—but then he was only an Italian:

> "Let me have men about me that are fat;
> Sleek-headed men, and such as sleep o'nights.
> Yond Cassius hath a lean and hungry look.
> He thinks too much; such men are dangerous."

The implied association of a gaunt frame and ascetic features with political unreliability is by no means typical of the Englishman's attitude to men in public life; our most respected statesmen, at any rate in recent years, have been spare of build and (outwardly) abstemious in appearance. The present Prime Minister is an outstanding exception, but the special place he holds in the nation's affection shows that he is the exception that proves the rule; the very robustness of his physique and personality raises him above the troubles of the age, an imperturbable rock of vitality in the midst of a hungry sea. The inextinguishable cigar has become a symbol, a shining beacon of security among the dangerous shoals. Yet even this may be self-mortification in reverse, for rumour whispers that he detests smoking and never, never touches a cigar in private life.

A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Civil debt—*Complaint within six months—Issue of summons after expiry of six months.*

On January 30, 1940, a complaint was laid before a justice of the peace under the S Corporation Act, 1889, for the recovery of private street works charges. In accordance with the practice that prevailed at the time, a summons was not issued on the complaint, it being withheld by agreement presumably between the complainant and the clerk to the justices at that time, to see whether payment would be made voluntarily.

I have now received a request from the complainant to issue a summons on this complaint. The proceedings commenced on the laying of the complaint which was done within the statutory period of six months of the date of service of the demand for payment.

Your opinion is sought as to whether there is any objection to the issue of the summons and to the making of an order for payment if the case is proved by the complainant. SAR.

Answer.

So long as the summons is signed by a justice before whom the original complaint was made it can now be issued, and an order made, but we think any practice of allowing complaints to lie in the office indefinitely before process is issued is undesirable and may certainly be the subject of comment.

2.—Contract—*Theatrical contracts—Advance publicity.*

My council engaged an artiste to provide certain entertainments in a Festival of Britain fête, the artiste agreeing to pay for the accommodation provided for these shows and to receive in return the whole of the takings of two shows and a share of the takings of the remaining show. The artiste refuses to pay the whole amount agreed in respect of the accommodation on the grounds that due to lack of advertising the fête was poorly attended and that his name only appeared in the bill of the show of which he was to receive a share of the takings. He alleges he did not receive adequate publicity which is a condition implied in every contract of a theatrical nature. It may well be that there is a custom in the theatrical world that an artiste should receive adequate publicity. I can, however, find no authority where this custom has been recognized or in which a term to this effect has been implied. I shall be glad if you will kindly let me know whether you are aware of any authority which bears on this point and, alternatively, whether you are aware of any custom like that contended for. DEVO.

Answer.

It seems that something may turn on the nature of the performance, it having been said (*Elen* v. *London Music Hall, Ltd., The Times*, May 31, 1906) that in contracts with variety and concert artistes a term is implied that the artiste shall be given publicity proportionate to his reputation, but that in respect of other types of performance the artiste must stipulate for what he requires. Even as against the alleged implication for variety and concert performances, there is now to be considered an award made by Mr. A. J. Ashton, K.C., upon an arbitration in 1919; this settled a standard form of contract by which all questions of publicity were to be at discretion of the management. So far, therefore, as we have discovered, we doubt whether the artiste's contention of an implied term can be maintained.

3.—Criminal law—*Fraudulent conversion—Organizer of mail order club failing to carry out orders.*

AB is the organizer of a mail order club. The arrangements are that twenty members are enrolled and each member agrees to pay 2*s.* per week for a period of twenty weeks. All the names of the twenty members are placed in a hat and are then drawn out in rotation. The first name out of the hat is given No. 1, the second name No. 2, and so on. This means that the first member can order an article to the value of £2 the first week the club commences, and the organizer orders it from a certain company, who pay her a commission on the sale. In the second week, the person who is drawn No. 2 does the same and so on through the twenty weeks. The mail order stores do not accept any responsibility for the organizer and he or she is not an agent.

AB has failed to provide the necessary goods that have been ordered by the members. In some cases the members have not received any goods at all, and in one case, the member has received part of the goods. AB has used the money for other purposes and I shall be pleased to have your views on what criminal offence has been committed, if any, by AB. SWID.

Answer.

AB could be charged under s. 20 (i) (iv) of the Larceny Act, 1916, for that she, having been entrusted with a certain sum of money in order that she might apply it to a certain purpose, namely the purchase of goods, did unlawfully and fraudulently convert the same to her own use. There would, no doubt, be several charges; a general deficiency should not be charged.

4.—Highways—*Footpath repair and removal of obstructions.*

Do you agree with the following, or can you add thereto:

1. Section 30 of the Local Government Act, 1929, provides that the county council shall be the highway authority for rural districts and rural highways were transferred to and vested in them.

2. Footpaths are highways.

3. By s. 47 of the National Parks and Access to the Countryside Act, 1949, the duty of repairing paths is placed upon the highway authority.

4. The duty of the highway authority to repair includes the removal of obstructions.

5. It may properly be deduced from the above premises that in a rural district the county council is the responsible authority for a public footpath overgrown with nettles and suckers and obstructed in several places by fallen trees.

6. It is suggested that the power vested in rural district councils by s. 26, Local Government Act, 1894, is directed towards the protection of the highway against obstruction by deliberate act, *e.g.*, erection of fences, barbed wire, buildings, etc., but that obstruction due to failure to maintain, or from unrestricted natural growth, is by its nature the duty of the highway authority.

BEMT.

Answer.

It is certainly the duty of the county council as highway authority to do the work indicated. As regards s. 26 of the Act of 1894, we agree generally that the verb "prevent" is there used, at least primarily, in relation to positive actions, but we should not regard it as *ultra vires* for a district council to "protect" a right of way by clearing the overgrowth, by virtue of that section. Still, so long as the county council is ready to do its duty, with its greater resources, we think the duty of the district council under s. 26 can (with reference to natural causes of obstruction) be satisfied by keeping the county council informed.

5.—Landlord and Tenant—*Covenant against sub-letting—Breach—Recovery of possession.*

W purchased a dwelling-house on July 30, 1947, subject to the existing tenancy of G. G had become the tenant of the property on March 5, 1937, and a tenancy agreement was prepared at that time stating that the tenant should not assign or underlet the premises or any part thereof without the consent in writing of the landlord. W purchased the property from the personal representatives of the landlord, who let the property in the first place to G, and it is not disputed that G sublet certain rooms with the original landlord's consent. W objects to the tenant's subletting rooms and wishes to know if he can claim possession of the property by reason of the tenant's committing a breach of the tenancy agreement. W requires possession of the property as he wishes his son to take over the tenancy. W on becoming the owner of the property immediately informed the tenant of his objection and some time later the sublessees left the property. G, the tenant, is however still subletting rooms from time to time, and has recently erected a notice board in the garden stating that board residence can be obtained. Your advice will be appreciated upon W's rights against the tenant G. EAST.

Answer.

We are assuming that the house is within the Rent Restrictions Acts. We assume also that the original landlord's permission to sub-let was limited to G's then proposals. If so, while W's objection to the continuance of that sub-letting might have been ineffectual if resisted by G, the permission seems to have become spent when G in fact got rid of the sub-tenants who had entered under that permission. On the facts before us, it seems that G is in breach of covenant, and that W can obtain possession on this ground, if the court consider this reasonable; *see* (*a*), and the parenthesis immediately before it, in sch. I to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933.

6.—Local land charges—*Registration of time limit under s.* 53 *of the Public Health Act*, 1936—*Delayed registration.*

On a recent inspection of my council's register of local land charges it has been found that a number of properties for the erection of which

a temporary licence was issued under s. 53 of the Public Health Act, 1936, are not registered. In view of this I shall be obliged if you would let me have your opinion on the following :

Having regard to the fact that several of the properties have been the subject of official searches on which the temporary licence has not been disclosed, is it in your opinion correct for the necessary entries to be made now in the local land charges register ?

In the event of such entries being so registered what action, if any, could be taken against the council by a vendor wishing to sell the property but being unable to do so by reason of the disclosure of the temporary licence, such licence, by reason of non-registration, having not been disclosed on former certificates of search. ETRO.

Answer.

The expression "a temporary licence" means, no doubt, that when passing the plans the council fixed a period on the expiration of which the building must be removed. We know nothing to prevent the registering now of the "charge," when it will be effective against future purchasers : we dealt with a rather similar, though more complicated, problem of belated registration of a "charge" under the Building Materials and Housing Act, 1945, recently. But a present owner, if he is not the owner who deposited the plans, is a purchaser for value without notice not bound (it seems) by subs. (5) of the section and, if he can show pecuniary loss (*e.g.*, that he paid more than he would have paid had he known of the "charge" and that registering the charge now has reduced the value he would receive on resale), he has, we think, a right of action. This will not be against the council or against the registrar of local land charges for registering now, but against the registrar who failed to register at the proper time.

7.—Magistrates—*Jurisdiction and powers—Obscene Publications Act, 1857—Procedure before justices—Award of costs.*

Proceedings have recently been taken in this petty sessional division against two booksellers for an order for the destruction of certain obscene publications found to be in the shops of which the defendants were the occupiers, and which had been seized under a search warrant granted by two justices. The cases were proved and orders for destruction made. Proceedings were taken by summons on the complaint of the detective inspector conducting the cases, and although the order for destruction is addressed to the complainant a copy of the order was served on the defendant. The justices who heard the complaint would have been quite prepared to order the defendants to pay substantial advocates' fees by way of costs, but were informed by the prosecuting solicitor that he did not consider that they had any power to order costs.

Nothing is said in the Act itself concerning costs, although costs are expressly referred to in s. 4 dealing with appeals. Section 18 of the Summary Jurisdiction Act, 1848, is, however, very wide in terms and refers to "orders made by a justice or justices of the peace." I have referred to an article at 60 J.P.N. 163 dealing with costs under the Small Tenements Recovery Act, 1838, and have always understood it is not the practice to grant costs in proceedings under this Act. The reasons given in your article for this are (*inter alia*) because the proceedings are not by way of summons and no order as such is served on the defendant. Neither of these objections applies in proceedings under the Obscene Publications Act, 1857, and I shall be glad to know whether in your view justices have power to order costs when such proceedings are taken. It should be mentioned that the form of order under the Act given in *Oke* makes no provision for an order for costs. It is also observed that in the recent case of *Cox* v. *Stinton* [1951] 2 All E.R. 637 ; 115 J.P. 490, Lord Goddard stated, "In my opinion the Obscene Publications Act, 1857, provides its own procedure and is a complete code in itself." It is understood that some justices throughout the country consider they have power to award costs and do so, and others are of a contrary opinion. JEST.

Answer.

We agree that the effect of the case referred to is that the Summary Jurisdiction Acts do not apply to such proceedings. There is no power given by the 1857 Act to award costs and, therefore, no costs can be ordered.

8.—Magistrates—*Practice and procedure—National boards—Who may apply for process and appear for them in magistrates' courts ?*

I have recently been asked to advise whether nationalized Boards are entitled to appear before justices other than by solicitor or counsel for the purpose of recovering small debts due to them. The point has been raised by some magistrates' clerks that companies and other corporate bodies must appear by solicitor and that it is insufficient therefore for such Boards to authorize an unqualified person to appear alone without a solicitor merely to prove the debt. The cases quoted at p. 180 of *Stone*, 80th edn., 1948, appear to support this view.

The simple procedure before justices for recovery of civil debts is a great advantage to such Boards in many instances but the matter is complicated by the uncertainty which appears to exist on this point.

Assuming that a competent officer of such a Board appears before the justices upon a complaint, and although not represented by a solicitor is able to prove the debt to the satisfaction of the justices, is it competent to the bench to object to this procedure so as to non suit the Board ? SIEV.

Answer.

Unless the Act by which the Board is constituted or some other statutory provision authorizes some officer of the Board or other person to apply and to appear, we think that the Board can apply and appear only by counsel or solicitor.

It may be found that the body existing before the nationalized Board was constituted had power to authorize certain of its officers to take proceedings, and that this power has been transferred to the nationalized Board, but we think that it is always for the Board which seeks to apply or to appear by someone who is not a barrister or a solicitor to justify so doing.

9.—Music, etc., licence—*Application for additional music licence—Refusal of magistrates to hear application.*

X, a cinema company, holds a music licence permitting musical entertainment to be provided until midnight. X recently applied for an additional new licence to be granted permitting musical entertainment on the same premises from midnight on October 25 to 2 *a.m.* on October 26, 1951, when it was proposed to announce early results of the General Election and between the announcements of the results to provide interludes of recorded music. There was to be no charge for admission, and at the close of the evening performance, those members of the audience who wished to remain were to be allowed to do so ; whilst the general public would be admitted without charge to occupy such sitting accommodation as might be vacant.

Before the application was made, the magistrates' clerk informed X's solicitor that the magistrates considered that they had no power to grant a new licence.

In my view the magistrates have power to grant such a licence as was required under s. 51 (11) of the Public Health Acts Amendment Act, 1890.

On the other hand there is the view that the temporary use of a room for music and dancing on one particular occasion is not within the section and that there must be habitual user for several instances of user (*Strutt* v. *Lewis* (1804) ; *Gregory* v. *Tuffs* (1833) ; *Gregory* v. *Taverner* (1833) ; and *Marks* v. *Benjamin* (1839)). *See Paterson* (59th edn., 1951), p. 387.

We should appreciate your views on :

1. Whether the magistrates were in order in refusing to hear the application.
2. Whether the magistrates had power to grant the new licence.
3. Whether an offence would have been committed by X under s. 51 (9) of the said Act, in providing musical entertainment outside the hours permitted under the existing licence. NABA.

Answer.

The hours during which public music, etc., is permitted in premises licensed under the Public Health Acts Amendment Act, 1890, s. 51, are fixed by the justices in accordance with subs. (7) of the section. Usually the justices, in fixing the hours, reserve to themselves a power to extend them on proper application (*see, e.g.*, the model form of Music and Dancing Licence in *Paterson*, 59th edn., p. 1651, condition No. 2). This apparently, is not the case in our correspondent's district.

We see nothing in this section, nor do we know of any decided case, which prohibits a licence being granted for certain hours, notwithstanding the currency of another licence in respect of the same premises covering certain other hours.

Therefore we think :

1. The magistrates should have heard the application in order, at least, to have given the applicant an opportunity of arguing that it was within their powers to have granted it.
2. We think that they had the power.
3. Yes, although we think that the offence would have been extremely technical, having regard to the fact that the public would attend the cinema for the purpose of hearing the election results ; the performance of recorded music (although taking up a large part of the time) would be subsidiary to the main purpose.

10.—Public Health Act, 1936, s. 47—*Joint provision of closets—Council's contribution—No agreement in advance.*

During the past three years a firm owning a mill and adjacent domestic premises have carried out a number of closet conversions at a cost, exclusive of lifting plant, of £1,015. A retrospective inquiry has been received asking what contribution the council will make towards the costs. Before the work began there was a joint meeting between representatives of the owners and the council, primarily to discuss technically how best to lift the sewage into the public sewer ; it being accepted that the cost of the sewage lift would fall on the owners.

The owners now say it was then stated the council could permissively contribute one half of the expenditure of carrying out the conversions. There is nothing to this effect in the minutes of the meeting, nor the subsequent correspondence.

Looking at the tense of the appropriate subsection it does not seem to me that the council could now properly make any contribution. Do you agree? COL.

Answer.

We agree with your interpretation of the section. The statement that the council "could contribute" would have been true, and might have been made. Whoever drew the council's notes of the meeting may have considered it too obvious to be worth recording, while the owners might have misunderstood "could" as "would." If the council are fully satisfied that the case is one in which a private person standing in their shoes would probably contribute, because there was a real misunderstanding, on the faith of which the owners spent money to which the council would have had power to contribute if a prior agreement had been made, the council may consider it right to apply to the Minister under the proviso to s. 228 (1) of the Local Government Act, 1933, for sanction to their making some payment, thus getting over the technical difficulty of doing so.

11.—Public Health Act, 1936, s. 75—*Interpretation—Meaning of "person."*

We refer to an article by S. M. Richardson at 115 J.P.N. 485. At p. 487 in his concluding sentence he says that a corporation is "a person within the meaning of the Act." He does not however give any authority for this observation, and we shall be obliged if you can refer us to the section or case upon which this statement is based. BENO.

Answer.

See s. 19 of the Interpretation Act, 1889.

12.—Public Health—*Trade effluent—Discharge to sewers—Conditions.*

Is a non-county borough council obliged to take into its sewers and dispose of trade effluents subject only to such restrictions as are authorized by the Public Health (Drainage of Trade Premises) Act, 1937? Can an annual payment by the trading corporation to the council be laid down as one of the conditions? Byelaws have not yet been made under the Act. Could an annual money payment be required by byelaw as one of the conditions for disposing of trade effluents? AFF.

Answer.

The answer to the first sentence is, Yes, if the words "contained in or" be inserted before "authorized." The Act itself is stringent as regards the non-privileged effluents. The answer to the remainder of the query is, in our opinion, No, except as expressly provided by s. 5: *see Lumley's* note (*n*), p. 1470 (eleventh edn.).

13.—Road Traffic Acts—*Speed limit of goods vehicles—Effect of* 1950 *Variation of Speed Limit Regulations.*

I would refer to P.P. 21 at p. 64, *ante*. At 114 J.P.N. 540, in your remarks on the Motor Vehicle (Variation of Speed Limit) Regulations, 1950, you confine the freeing from the thirty *m.p.h.* speed limit to vehicles "used mainly for the carriage of passengers and their effects." I am at a loss to reconcile this view with the wording of para. (2) sub-para. (1) (*a*) of sch. I to the Road Traffic Act, 1930—as substituted by these regulations—and form the opinion that all goods vehicles with less than three tons unladen weight are not subject to the thirty *m.p.h.* speed limit if:

1. They are not carrying goods although authorized vehicles;
2. They are not required to be licensed under the Road and Rail Traffic Act, 1933;
3. They have not been licensed under the Road and Rail Traffic Act, 1933;

Am I in error in forming this view? Jo.

Answer.

We do not think that the note at p. 540 referred to by our correspondent expresses a view any different from that in the P.P. The note does not pretend to deal with the matter in detail.

We adhere to the view expressed in our previous reply, and we think the point of sufficient importance to be dealt with at greater length elsewhere in our columns. The replies to our correspondent's questions are:

1. We prefer to say "if they are being used for a purpose for which they can lawfully be used without the authority of a licence."
2. We agree.
3. We do not agree if the use is one which is lawful only with the authority of a licence under the 1933 Act.

14.—Road Traffic Acts—*Costs incurred by police in operating a speed trap—Order, on coviction, that defendant pay part of such costs.*

I was very interested to read your answer to P.P. 14 at 115 J.P.N. 831. While I agree with the general principles which are set out in the second paragraph of the answer given to this P.P., I do not understand their application to the facts of the case as set out in the question.

The speed trap would not normally be set for a particular offender, but for all drivers who happened to be using the road in question when the trap was operating. I therefore do not understand how you distinguish between the cost of operating such a trap and the general police expenses in operating, for instance, a patrol car. If it were reported to the police that the driver of a particular motor coach, using a known route, was a repeated offender, but the driver was too wily to be caught by a police car then, if a walkie-talkie trap were operated especially to catch this offender, I agree there would be some justification for a request that the expense should be included in any costs awarded against that offender, but I feel that it is an entirely different matter when the trap is set for all-comers.

I would be interested to hear your views in reply to this point, and would ask you to bear in mind the fact that the method of trapping by a walkie-talkie system is extravagant both in manpower and equipment. Had the expenses on this occasion (which apparently covered several days' operation of the trap) not been divided between a number of defendants, the cost would have been out of all proportion to the gravity of the offence committed. JOHN.

Answer.

No hard and fast rule can be laid down, and it must be for the court to exercise their discretion in each case. They may, in doing so, consider whether they think it was reasonable to employ a particular method, involving unusual expense. If they thought unnecessary expense had been incurred they could refrain from taking such expense into account in deciding whether or not to award costs.

But we maintain that where special measures are taken to detect a particular offence or particular offences (because, for instance, of complaints that motorists are habitually exceeding the speed limit on a certain stretch of road) it is proper for the court, if satisfied that the measures are specially and reasonably taken, to make offenders so detected pay something towards the costs. Such costs need never be extravagant so far as a particular defendant is concerned. Their amount is in the court's discretion, and need not be calculated completely to reimburse the police for the special expense incurred.

15.—Road Traffic Acts—*Speed limit—Goods vehicles not exceeding three tons—No licence under* 1933 *Act.*

The first schedule of the Road Traffic Act, 1930, as subsequently varied by the regulations made by the Minister of Transport prescribed

speed limits for vehicles of the classes and descriptions therein specified. The present regulations exempt from the speed limits so prescribed certain goods vehicles fitted with pneumatic tyres and not exceeding three tons unladen weight when not drawing trailers. The speed limit of thirty *m.p.h.* which has hitherto applied to all such vehicles will in future apply to such vehicles only if they are authorized to be used under carriers' licences or if they would require to be so authorized but for the specific exemptions contained in s. 1 (7) of the Road and Rail Traffic Act, 1933, or the fact that they are used in the service of the Crown or the British Transport Commission.

The above regulation gives rise to some difference of opinion in so far as maximum speeds prescribed by the first schedule of the Road Traffic Act, 1934, in relation to motor cars up to three tons in weight whether goods or private, and under the new regulation it is more or less accepted that an ordinary motor lorry up to three tons in weight, but licensed solely for private purposes can be used at an unlimited speed outside a built up area. The writer is of the opinion that this was never intended by the above regulation and there is some doubt as to the correct interpretation of the above, and I would therefore like to receive your opinion on the correct interpretation of this regulation. JAVU.

Answer.

Provided that the vehicle is not used for a purpose for which a licence under the 1933 Act is required and that no trailer is drawn, the thirty *m.p.h.* speed limit does not apply.

16.—Road Traffic Acts—*Traffic signs—"Stop, Children Crossing"—Authority for use—Offence under s.* 49.

Road traffic sign No. 55 in the second schedule Part IV to the Traffic Signs (Size, Colour and Type) Regulations, 1950, prescribes the measurements for a sign with the wording "Stop—Children Crossing." By what reasoning does this become a "mandatory" sign so that it is an offence under s. 49 of the Road Traffic Act, 1930, to disobey it when it is displayed to traffic by a warden duly appointed by an education authority ? JINS.

Answer.

By s. 48 (1) a highway authority may cause or permit traffic signs to be placed on a road in their area, subject to and in conformity with general and other directions given by the Minister of Transport.

The Traffic Signs (General) Directions, 1950, were made by the Minister under s. 48, and by reg. 20 signs of the type shown in Diagram 55 of Part IV of the second schedule to the Size, Colour and Type Regulations shall only be used.

(*a*) By a person duly authorized for the purpose by a highway authority ; and

(*b*) Between 8.30 *a.m.* and 5 *p.m.*, or half an hour after sunset, whichever is the later.

The authorization by the highway authority must therefore be proved, and provided then that the times come within (*b*) above, it appears that this is a sign for regulating the movement of traffic within s. 49 of the 1930 Act, and that it is an offence to fail to conform to it.

We are not aware of any authority for the education authority to appoint, but assume that this may be done with the approval and due authorization of the highway authority.

17.—Tort—*Obstruction to trader's premises—Damages—Compensation—Electricity undertaking.*

A licensed restaurant proprietor in the main street of a town has for some time past opened his premises on Sunday for trading, but recently on attending there to begin trade on a Sunday morning, he found that the electricity board were making an excavation immediately outside his premises, with the aid of an automatic drill. The noise of the drill on the concrete pavement, and the obstruction made it impossible for him to operate his business, as no one could hear anything that was said on the ground floor, nor could the telephone be used. As a result, all the staff had to be sent off duty and the premises closed, with a resulting loss to the proprietor. No notice of the intended operations was given to the proprietor. Has he any claim against the board for the loss he has sustained ? EEE.

Answer.

Before advising your client to take any decisive step, you will no doubt verify whether there is any special Act, taken over by the board with the undertaking, and will, generally, endeavour to ascertain whether the board believed themselves to be acting under statutory power, and, if so, how such power applied to individuals. Subject to this, we should say "yes." The facts, though on a smaller scale, are those in *Lingké* v. *Christchurch Corporation* (1912) 76 J.P. 433. In that case, plaintiff was held entitled to compensation under s. 308 of the Public Health Act, 1936, now s. 278 of the Public Health Act, 1936, the reason being that, but for the statutory right to compensation, he would have had a right to damages. *Lumley's* notes on that section (eleventh edn.) repay attention, even for the common law. *See* also s. 17 of the Electric Lighting Act, 1882, as applied (compensation), and the concluding words of s. 18 of the Public Utilities Street Works Act, 1950.

18.—Water supply—*Supply cut by owner of adjoining house.*

A owns two adjacent houses lettered B and C. The water company provides them with water through a tank situate in house B. This latter house was recently sold to D who then occupied it. The water supply to C is controlled by a stopcock in B. There is a dispute between A and D as to the liability for repairs to the tank and the joint supply pipes and to enforce a decision D (on the advice of his solicitors) cuts off the supply to C. D apparently was made aware of the joint supply when purchasing the house, but it is not known why A when selling did not protect his right in the water supply.

C which is occupied by an elderly tenant is without a water supply and your opinion is requested as to :

(1) The action the council should take to have the house supplied ; and

(2) Under what Act and on whom should any requisite notices be served.

Section 138 of the Public Health Act, 1936, as amended by s. 30 of the Water Act, 1945, hardly seems appropriate as the water pipes are there ; it is only the stopcock that wants turning.

Section 9 of the Housing Act, 1936, might be invoked on the ground that the house is unfit for human habitation owing to the absence of a water supply. In this case the notice would be served on the person having control of the house, namely A, whereas the person causing the trouble is D.

If s. 92 of the Public Health Act, 1936, could be used on the ground of a nuisance interfering with the personal comfort of the tenant : *Betts* v. *Penge U.D.C.* (1942) 106 J.P. 203, it might be possible to serve notice under s. 93 also on D as the person by whose act the nuisance arises. DJUD.

Answer.

We note that D purchased and went into occupation with knowledge of the easement enjoyed by A in respect of the house C. We should proceed for nuisance, under s. 92, so as to go for D directly.

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Town Clerk.

Guildhall,
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